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AGENDA

Tuesday, April 25, 2023
9 a.m. -- State Capitol, Room 126

PART II

AB 1209 (Jones-Sawyer) through ACA 8 (Wilson)

Date of Hearing: April 25, 2023
Counsel: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1209 (Jones-Sawyer) – As Amended April 17, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires public defenders and indigent defense attorneys to commence representation of an arrestee shortly after the booking process, requires a private advisal of consequences and rights be given by counsel to a defendant before a plea can be taken, and allows courts to vacate pleas taken without advisal of counsel at any time after the plea is entered. Specifically, **this bill**:

1) Requires public defenders and indigent defense attorneys to commence their representation of an arrestee shortly after the booking process begins so that counsel can interview the arrestee, advise them of their rights, and make a meaningful argument during a bail hearing.

2) Specifies that counsel must commence representation as soon as feasible after being notified that an arrestee has been booked, but in no event after 24 hours or sufficiently before the arraignment. Defines a sufficient time before arraignment as time that allows counsel to interview the arrestee, make meaningful bail arguments, properly advise the arrestee of their rights, and take any other necessary steps to protect the arrestee's rights.

3) States that all persons who are arrested and booked are presumed financially unable to employ counsel for indigent defense purposes.

4) Requires a summons in a felony case to include information notifying the defendant of their right to free counsel and the contact information for the local public defender or indigent defense provider.

5) Provides that an arresting or booking officer must verbally inform an arrestee of their right to call, at any hour, an attorney, bail bondsman, or other person.

6) Requires a booking officer to inquire whether an arrestee is responsible for providing care to another household member and to notify the arrestee that they may make two additional phone calls for the purpose of arranging for the household member's care.

7) States that, immediately upon booking and in no event later than 2 hours after the arrest, a booking officer must notify the local public defender or indigent defense provider that an arrestee is in custody.

8) States that an arresting officer's citation in a misdemeanor case must include, among other things, information notifying an arrestee of their right to free counsel and the contact information for the local public defender or indigent defense provider.

9) Requires a defendant, before arraignment, to be individually and confidentially advised by a public defender or indigent defense provider of the importance of the right to counsel, potential collateral consequences of a conviction, and the right to assistance of counsel if the defendant is indigent.

10) States that a court must ensure the defendant receives an individual and confidential advisal by a public defender or indigent defense provider prior to accepting a waiver of counsel.

11) Provides that the individual and confidential advisal by defense counsel must occur in advance of a defendant's arraignment and must not delay a court date set for the defendant unless the defendant consents to the delay.

12) States that indigent defense providers in counties with a private counsel system as their primary method of public defense must perform duties required of the public defender, as specified.

13) Prevents a court, in a felony case that is not punishable by death or life imprisonment, or in a misdemeanor case, from accepting a plea from a defendant without counsel unless a defendant has been given a confidential advisal by counsel, been individually advised of their rights by the court in writing and verbally, and the defendant waives their right to counsel in writing and verbally.

14) Creates a presumption that a plea taken without counsel is not knowing, voluntary, and intelligent in violation of the Fifth Amendment.

15) Authorizes a court to vacate a plea taken without counsel, as described above, at any time after a conviction.

16) Prevents a prosecutor or judge from offering a plea offer, disposition, or resolution on a charge unless defendant's counsel is present or if the defendant has been given an advisal, as described above, by counsel.

EXISTING LAW:

1) States that a defendant in a criminal cause has the right to, among other things, the assistance of counsel for the defendant's defense and to be personally present with counsel. (Cal. Const. Art. I, § 15.)

2) States that an arraignment must be generally made by the court and consists of reading the accusatory pleading to the defendant, delivering them a copy, and inquiring as to whether the defendant pleads guilty or not guilty. (Pen. Code, § 988.)

3) States that when a defendant first appears for arraignment the magistrate must immediately inform them of the charges and of their right to counsel. (Pen. Code, § 858, subd. (a).)

4) States that a defendant charged with the commission of a felony by written complaint shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file and that the magistrate must deliver a copy of the complaint, inform of the right to assistance of counsel, and inquire into whether the defendant desires counsel. (Pen. Code, §

859.)

5) States that, in a noncapital case, a defendant appearing at arraignment without counsel must be informed by the court they have a right to counsel and must be asked if they desire counsel. If the defendant is unable to employ counsel and desires counsel, the court must appoint them counsel. (Pen. Code, § 987, subd. (a).)

6) Provides that, in a capital case, a defendant appearing at arraignment without counsel must be informed that they will be represented by counsel at all stages of the proceedings, at public expense if they are unable to pay. (Pen. Code, § 987, subd. (b).)

7) Authorizes defendants, for misdemeanor offenses, to enter a plea through counsel, except for an offense of driving under the influence. (Pen. Code, § 977, subd. (a)(3).)

8) States that, for felonies punishable by death or life imprisonment without parole, a court may not accept a plea of guilty from a defendant appearing without counsel, nor may a court accept a guilty plea without the consent of defendant's counsel. (Pen. Code, § 1018.)

9) States that, for felonies not punishable by death or life imprisonment without parole:

   a) A court may not accept a plea of guilty from a defendant who appears without counsel unless the court first fully informs them of their right to counsel, makes a finding that the defendant understands the right to counsel and freely waives it, and if the defendant expressly states in open court that they do not wish to be represented by counsel.

   b) A court may, upon a defendant's motion to withdraw and good cause shown, permit a guilty plea to be withdrawn and substituted with a plea of not guilty at any time before judgment, or within six months after an order granting probation when the entry of judgment is suspended. (Pen. Code, § 1018.)

10) Authorizes a defendant no longer in criminal custody to make a motion to vacate a conviction or sentence if they were not meaningfully informed of immigration consequences, discovered new evidence of actual innocence that should result in the motion being granted in the interests of justice, or if their conviction or sentence was improperly obtained based on their race or ethnicity. (Pen. Code, § 1473.7, subd. (a).)

11) Provides that a motion to vacate a conviction or sentence based on immigration consequences may be untimely if it is not filed with reasonable diligence after discovering the existence of pending immigration proceedings. (Pen. Code, § 1473.7, subd. (b)(2).)

12) States that a motion to vacate a conviction or sentence based on newly discovered evidence of actual innocence or based on race or ethnicity may be untimely if it is not filed without undue delay from the date the defendant discovered, or reasonably should have discovered, the evidence providing the basis for relief. (Pen. Code, § 1473.7, subd. (c).)

13) Establishes the office of the Public Defender and outlines the duties and responsibilities of public defenders. (Gov. Code, §§ 27700 *et seq.*)

14) Outlines standard procedures for indigent defense providers in counties without public defenders, or where indigent defense providers are the primary method of public defense. (Pen. Code, § 987.2.)

15) Requires a magistrate to issue an arrest warrant upon receiving a felony complaint if, and only if, they are satisfied there is reasonable ground to believe the defendant committed the offense. (Pen. Code, § 813, subd. (a).)

16) States that a magistrate may issue a summons in a felony case in lieu of an arrest warrant and that the summons must contain the defendant's name, the offense charged, the time and place for the defendant to appear, and a notification outlining the booking process, among other things. (Pen. Code, § 813, subd. (b).)

17) Provides, among other things, that an attorney at law may visit an arrestee, upon the request of an arrestee or arrestee's family. (Pen. Code, § 825.)

18) States, among other things, that a booking facility shall contain a sign informing an arrestee of numerous matters, such as their right to free telephone calls, their right to an attorney, and other information. (Pen. Code, § 851.5.)

19) Provides that a citation for a misdemeanor offense must include the offense charged, the name and address of the arrestee, and the date and time the arrestee must appear in court. (Pen. Code, 853.6.)

FEDERAL LAW: States that in all criminal prosecutions, the accused has the right to, among other things, assistance of counsel for their defense. (U.S. Const. Amend. VI.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The right to effective legal counsel is a fundamental constitutional right endowed by our U.S. and California Constitutions. In spite of this right, defendants who cannot afford legal counsel are appearing in court without counsel, and often entering a plea without ever having spoken to an attorney on the facts of their case. As recommended by the Committee on the Revision of the Penal Code, AB 1209 ensures that people who cannot afford private attorneys are not denied their right to effective assistance of counsel at their initial court appearance. As such, this bill will improve fairness in the criminal legal system, reduce racial disparities, and enhance community safety, consistent with data showing effective counsel yields enhanced public safety outcomes."

2) **Pretrial Detention Effects**: According to some researchers who examined pretrial detentions and recidivism rates, there are three major takeaways about the effect of pretrial detentions:

> "First, being held in detention pretrial beyond one or two days increases a person's chances of being arrested and charged again pretrial (for those eventually released before case disposition) and post-disposition. Second, all things considered, the longer one's stint in detention, the greater the odds of new penal contact. And third, the effects of pretrial detention on future

> penal system involvement are especially pronounced for low-risk defendants, individuals who likely would not have had further criminal legal system involvement had they not been held in detention. Thus, a growing body of research indicates that pretrial detention is creating 'recidivators' out of individuals who might not otherwise (re)offend."

(Sandra Smith PH.D. *Pretrial Detention, Pretrial Release, & Public Safety*. (Jul. 2022) <https://www.hks.harvard.edu/publications/pretrial-detention-pretrial-release-public-safety> [as of Mar. 2, 2023] at p. 6, footnotes omitted.)

The California Committee on Revision of the Penal Code (CRPC) has recently stated that providing legal assistance early in the criminal legal process can result in improved public safety benefits. (CRPC. *Annual Report and Recommendations*. (hereafter *CRPC Recommendations*) (Dec. 2022) <http://www.clrc.ca.gov/CRPC.html> [as of Apr. 19, 2023] at p. 44.) They pointed out that, in one study, arrestees who received a public defender prior to their bail hearing were 64% less likely to have a bail violation and 26% less likely to be arrested in the future. (*Id.* at 45.) CRPC also pointed to studies showing a significant increase in pretrial release rates, which meant that counties saved money they would have otherwise spent on incarcerating arrestees who deserved to be released. (*Ibid.*) One study from Cook County, Illinois estimated that providing counsel within 24 hours of arrest would save $12 million to $44 million annually. (*Ibid.*)

Currently, in California, defendants are not provided an adequate opportunity to receive advice from a public defender until after the arraignment. (Pen. Code, § 858, subd. (a).) It is at arraignment that a court informs a defendant of their charges, and then informs them that if they are indigent they can be provided a public defender or other indigent defense provider. (*Ibid.*) As the public defender would generally not be involved in the case at that point, the public defender is given insufficient time to gather background information on the case and the defendant to develop a meaningful bail argument or be able to properly decide what the next immediate step in the case should be. (*CRPC Recommendations* at 41.) And that is assuming the defendant even decides to utilize their right to counsel. One study of Kern County over a period of 7 years found that 30% of misdemeanor defendants pled guilty at arraignment without having counsel. (*Id.* at 44.)

This bill would require, among other things, a booking officer to call a public defender or indigent defense provider upon receiving an arrestee, as specified, and requires the public defender or indigent defense provider to begin representing the arrestee as soon as possible, and in no event later than 24 hours after the booking. As such, this bill seeks to ensure an arrestee has a defense attorney as soon possible so that they can properly prepare an argument for release at their bail hearing, and can have a meaningful conversation with their defense attorney before their arraignment.

3) **Advisal of Rights and Plea Withdrawals**: Penal Code Section 1018, in part, allows a court to permit a defendant to withdraw their guilty plea upon a showing of good cause that they, "were operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence." (*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1416; *People v. Huricks* (1995) 32 Cal.App.4th 1201, 1207-08.) If the defendant was without counsel at the time of the plea, then upon a showing of good cause, the court must allow them to withdraw their guilty plea. (*People v. Cruz* (1974) 12 Cal.3d. 562, 566.) A

defendant can file their motion any time before sentencing, or within 6 months after receiving a grant of probation. (*Ibid.*) A defendant's successful motion to withdraw their plea results in the case being restored exactly to where it was right before the plea, meaning that the defendant would have to renegotiate another plea or take the matter to trial. (*People v. Superior Court (Garcia)* (1982) 131 Cal.App.3d 256, 258.)

There are many different circumstances by which a defendant's free judgment can be overcome, including: favorable evidence being withheld, a failure to outline the direct consequences of a plea, and a failure to advise the defendant of their constitutional rights. (*People v. Ramirez* (2006) 141 Cal.App.4th 1501, 1506; *People v. Howard* (1992) 1 Cal.4th 1132, 1175; *People v. Walker* (1991) 54 Cal.3d 1013, 1023.) Under current law, a defendant may succeed on a motion to withdraw their plea even if they were represented by counsel at the time of the plea, but received incorrect legal advice. (*People v. Archer* (hereafter *Archer*) (2014) 230 Cal.App.4th 693, 702.)

This bill, in part, establishes a presumption that a plea taken without counsel means the plea was not knowing, voluntary, or intelligent, in other words, the absence of counsel meant the defendant's free judgment was not able to be exercised when entering into the plea. If, as in *Archer*, a defendant's plea based on mistaken legal advice is good cause to withdraw a plea, then it makes sense to presume that a plea with no legal representation is likely to constitute good cause for withdrawal of a plea. (*Archer*, *supra*, 230 Cal.App.4th at 702.)

This bill also gives the court jurisdiction to hear such a motion at any time after conviction. Currently, the maximum time a defendant is allowed to bring a motion to with draw a plea is six months after an order of probation. (Pen. Code, § 1018.) At times, a defendant may not be made aware until much later of the fact that they were operating under mistake or ignorance when entering their plea. Current law does allow for an extended time period, but only for certain scenarios. (Pen. Code, § 1473.7.) For example, a person who is no longer in custody may make a motion to vacate their conviction or sentence if they were not aware of certain immigration consequences, if they discovered new evidence in their case exonerating them, or if their conviction or sentence was obtained based on a prejudice due to their race or ethnicity. (Pen. Code, § 1473.7, subd. (a).) A defendant can move to vacate their conviction or sentence in these matters any time afterwards, however, their motion can be deemed untimely if they fail to file it without undue delay after being apprised of such information, or if they should have known earlier by exercising due diligence. (Pen. Code, § 1473.7, subd. (b) & (c).)

4) **Requiring Advisement of Counsel**: One part of this bill would require a defendant to speak with a defense attorney before entering into a plea. It does raise the question of respecting an individual's Sixth Amendment right to proceed through the judicial system. (*Faretta v. Cal.* (1975) 422 U.S. 806.) However, under current law, a defendant facing the death penalty or life imprisonment without possibility of parole (LWOP) cannot plead without consent of counsel. (Pen. Code, § 1018.) This means that counsel must be appointed and must agree to a defendant's plea in a death penalty or LWOP case. The California Supreme Court noted that there indeed was an infringement on the right of self-representation as a result of forcing a defendant to have counsel, but that the infringement was minor in comparison to the danger of the state erroneously subjecting a defendant to death. (*People v. Frederickson* (2020) 8 Cal.5th 963, 991-92 [quoting *People v. Chadd* (1981) 28 Cal.3d 739].) However, this bill only requires a defendant speak to counsel before entering a plea, not to obtain counsel's

consent before a plea. As such, the infringement on an individual's right to self-representation is considerably lower when considering the balance between an erroneous conviction and the right to self-representation.

5) **Arguments in Support**:

a) According to the bill's sponsor, *ACLU California Action*, "The Sixth Amendment to the Constitution guarantees the right of the accused to the assistance of counsel. In Gideon v. Wainwright, the U.S. Supreme Court reinforced this right, specifying that all people accused of crimes, regardless of wealth or education, are entitled to qualified legal counsel to assist in their defense. (Gideon v. Wainwright, (1963) 372 U.S. 335.) Since the Court's landmark decision in Gideon, the "assistance of counsel [has been] one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. (Id. at 342.)

"However, despite the guarantees of the Sixth Amendment, many Californians are being denied their right to counsel. In counties across the state, thousands of residents enter guilty pleas each year without speaking to an attorney before doing so. Entering uncounseled pleas, even for misdemeanors, can have grave consequences. These consequences range from loss of public housing or custody rights, eligibility for professional licenses, and reduced employment or earning capacity, to incarceration. For noncitizens, the consequences of an uncounseled plea may include deportation, inability to adjust their immigration status, and permanent family separation. Uncounseled guilty pleas also undermine the criminal legal process, increasing the likelihood of erroneous convictions and further eroding defendants' and the public's trust in the criminal adjudication process.

"In addition to the problems stemming from uncounseled guilty pleas, other decisions made without the effective assistance of counsel at a defendant's initial appearance can have equally, if not more, devastating consequences. Without a meaningful opportunity to consult with an attorney prior to arraignment, indigent pretrial defendants are less likely to obtain pretrial release, instead remaining in jail for the pendency of their case. Pretrial detention, in turn, increases the likelihood of conviction and the length of sentence – not to mention the further overcrowding of our already dangerous jails.

"Access to attorneys is inconsistent across the state and in some counties people unable to afford private representation wait days in jail before seeing an attorney after their arrest. Unsurprisingly, these and other consequences of lack of access to counsel at initial appearance fall disproportionately on BIPOC community members, people with disabilities, and noncitizens.

"When compared with other states, California's laws on access to the effective assistance of counsel at initial appearance are clearly behind. In a recent report by the Deason Criminal Justice Center, California received an 'F', failing on 4 out of 5 of the metrics used to evaluate a state's initial appearance laws. For these reasons, the Legislative Analyst's Office, the Committee on Revision of the Penal Code, and the Sixth Amendment Center have all recommended that the state address the problem of lack of access to counsel prior to arraignment.

"AB 1209 addresses California's access to counsel practices by requiring that indigent legal representation begin as soon as feasible after a person is arrested, but in any case within 24 hours after booking or sufficiently before the arraignment to allow for the provision of meaningful representation. Further, AB 1209 will ensure that before being allowed to waive their right to counsel or plead guilty to a crime, every person charged with a crime must receive an individual and confidential advisal from an attorney." (footnotes omitted)

b) According to the *California Public Defenders Association*, "This is an ambitious and much needed bill that defenders wholly support. No individual should be in a position where they enter a plea that could have far reaching consequences without first having access to counsel to advise them of the evidence against them, their possible defenses, and the consequences of entering a plea. Early representation also ensures that evidence of innocence including video surveillance, DNA, and other types of physical evidence, as well as evidence of an alibi is preserved and not lost or destroyed. It also dramatically improves the chance that an arrested individual will be released from custody and be able to maintain their job and support their family while their case is being litigated. Finally, early representation improves outcomes and reduces recidivism by improving the chances that an individual remains out of custody during the pendency of their case.

"It is for all these reasons indigent defenders have aspired to provide representation at the earliest possible time and sufficiently before the first appearance and to ensure that all individuals arrested have access to their services. However, in the vast majority of California counties, this aspiration has not been realized because there is no funding. In the counties where some type of early representation has been attempted, there have been a number of obstacles that have stood in the way of the program's success including a failure to provide meaningful access to clients in the jails and sub-stations, and a failure to provide necessary and basic case information required to effectively advocate on behalf of an individual at their first appearance. The failure to provide basic case information, including the names of individuals arrested with the client has also led to the unnecessary declaration of conflicts of interest on the part of defenders.

"For this bill to be effectuated, defenders would need increased resources including sufficient funding and statutory authority to ensure access to clients and necessary client and case-related information. With funding and access, AB 1209 will help prevent wrongful convictions, keep people employed and productive, lower recidivism and ensure that individuals do not plead guilty without fully understanding the consequences and implications of their plea. AB 1209 will also help prevent non-citizens, even in minor cases, from taking plea bargains that can result in major immigration consequences for them and their families."

6) **Argument in Opposition**: According to the *Riverside County Sheriff's Office*, "AB 1209 would propose an amendment to §825(b) PC. This proposed amendment would allow an attorney, or an attorney's representative, at the request of the incarcerated person, or a relative of the incarcerated person, to visit them in one of our correctional facilities. The terminology used in AB 1209 is vague at best, and does not define what an 'attorney's representative' is? The lack of clarity in this amendment leaves a lotto interpretation. Potentially, AB 1209 could give the general public private, confidential access to the incarcerated population that they typically would not be afforded.

"We do not take issue with attorneys holding private, confidential meetings with their clients within our facilities. We respect the right of confidentiality and intend to maintain the integrity of the criminal justice system. However, allowing their representatives into our facilities raises serious logistical and security concerns. The practice of law is highly regulated through Rules of Professional Conduct (Rule) established by the State Bar of California, the Business and Professions Code, and the Supreme Court of California. In fact, even prior to an attorney being admitted to the Bar, they must pass an extensive background check. Attorneys are bound by these rules and face harsh disciplinary action if they violate these rules, to include being disbarred. In contrast, their staff of representatives are not held to these same standards and they are not subject to a background check.

"For example, attorneys are prohibited from engaging in sexual relations with their clients (Rule 1.8.10), attorneys are generally prohibited from receiving gifts from their clients (Rule 1.8.3), an attorney shall not counsel a client to engage, or assist a client in conduct that the attorney knows is criminal, fraudulent, or a violation of any law (Rule 1.2.1), an attorney shall not enter into a business, attorney shall not engage in conduct involving dishonesty fraud, or deceit. (Rule 8.4). None of these rules apply to an attorney's representative. Affording an attorney's designee the same confidentiality and privacy could potentially lead to more contraband being smuggled into our facilities. This statement is not mere speculation, it is factually based.

"In the Riverside County Jail System, we have documented incidents, in which, items considered contraband were attempted to be smuggled in by people who represented themselves as paralegal or legal runners. The following is a brief synopsis of each of these incidents:

- On June 18, 2020, an internal memorandum was authored, documenting the discovery that two court-appointed paralegals were abusing their status to relay messages to and from various inmates. In this case, the involved inmates were granted Pro-Per status by the courts and utilized their legal runners to circumvent jails security and pass messages to other inmates housed at other Riverside County jail facilities. The messages involved what inmates had obtained leadership positions in a specific security threat group.
- On September 29, 2020, a criminal report was filed under RSO file #SC20740002 / SWF2101371, charging the defendants Sarah Vierra and Ryan Durham, with PC § 182 and PC § 4573, conspiracy to smuggle a controlled substances into a jail. During this investigation, several jail calls were made regarding the introduction of narcotics, by means of legal mail. On September 30, 2020, Ms. Vierra attempted to drop off legal supplies and paperwork to Mr. Durham. A scan of the paperwork revealed abnormalities in the paper. There appeared to be water stains on various sheets of paper. Those sheets of paper eventually tested positive for methamphetamine. On August 30, 2022, Ms. Vierra pled guilty on this case and was sentenced to 24-months formal probation.
- Recently, the RSO Corrections Intelligence Bureau (CIB) was provided sensitive information by an incarcerated person regarding another inmate's attempt to introduce contraband into the John Benoit Detention Center, located in Indio, California. Information gathered stated the incarcerated person was conspiring with associates to introduce legal documents laced with illicit drugs into the facility via a

paralegal. This investigation is ongoing.

"Due to the diligence of our custody staff, these attempts to introduce narcotics into the Riverside County Jail System were thwarted. It is our opinion that if AB 1209 is passed, these attempts would rise in frequency because it would allow non-lawyers the same privilege as lawyers to hold private, confidential meetings with an incarcerated person. It could also lead to unsanctioned conjugal or other sexual visits within our facilities because the phrase 'attorney's representative' is not clearly defined and could be interpreted to include anyone outside of the attorney's office staff…"

7) **Related Legislation**: AB 61 (Bryan), would requires that a person must be taken before a court without unnecessary delay, and, at the most, within 48 hours of their arrest. AB 61 is currently pending hearing in the Assembly Appropriations Committee.

8) **Prior Legislation**:

   a) AB 2542 (Kalra), Chapter 317, Statutes of 2020, authorized post-conviction relief for convictions or sentences obtained based on prejudice against race or ethnicity.

   b) AB 2867 (Gonzalez Fletcher), Chapter 825, Statutes of 2018, made changes to the post-conviction relief for convictions or sentences obtained without proper advisal of immigration consequences by, among other things, further outlining the timeliness requirements and further defining what types of immigration consequences a defendant must face.

   c) AB 813 (Gonzalez), Chapter 739, Statutes of 2016, authorized post-conviction relief for convictions or sentences obtained without proper advisal of immigration consequences.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (Sponsor)
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Fair Chance Project
Initiate Justice
Interfaith Movement for Human Integrity
NAACP Bakersfield Branch
Safe Return Project
Smart Justice California
Starting Over, INC.
Young Women's Freedom Center

Opposition

Riverside County Sheriff's Office

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 AB-1209 (Jones-Sawyer (A))

Mock-up based on Version Number 98 - Amended Assembly 4/17/23
Submitted by: Mureed Rasool, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 27706 of the Government Code is amended to read:

27706. The public defender shall perform the following duties:

(a) (1) ~~Upon~~ **1) At any time upon** request of the defendant, **2)** following arrest and ~~booking into jail and beginning prior to the arraignment,~~ **and booking prior to any bail or court proceeding,** or **3)** upon order of the court, the public defender shall defend, without expense to the defendant, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior courts at all stages of the proceedings, including the arraignment, pretrial release hearing, and preliminary examination. The public defender shall give counsel and advice to such person about any charge against the person upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in the opinion of the public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(2) The public defender shall commence the representation described in this subdivision as soon as feasible after being notified of a person's arrest, but in any case within 24 hours after booking or sufficiently before the arraignment to allow the provision of meaningful representation, whichever occurs sooner. Sufficient time before the arraignment means the public defender has time to interview the defendant, make a meaningful argument to secure pretrial release when appropriate, accurately and adequately advise the accused and the court, and take any other necessary actions to protect the rights of the accused.

(b) Upon request, the public defender shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars ($100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, the public defender shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon request, or upon order of the court, the public defender shall represent any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(e) Upon order of the court, the public defender shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

(f) Upon order of the court the public defender shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.

(g) Upon the order of the court or upon the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.

SEC. 2. Section 27707 of the Government Code is amended to read:

27707. (a) The court in which the proceeding is pending may make the final determination in each case as to whether a defendant or person described in Section 27706 is financially able to employ counsel and qualifies for the services of the public defender. The public defender shall, however, render legal services as provided in subdivisions (a), (b) and (c) of Section 27706 for any person the public defender determines is not financially able to employ counsel until such time as a contrary determination is made by the court. If a contrary determination is made, the public defender thereafter may not render services for such person except in a proceeding to review the determination of that issue or in an unrelated proceeding. In order to assist the court or public defender in making the determination, the court or the public defender may require a defendant or person requesting services of the public defender to file a financial statement under penalty of perjury. The financial statement shall be confidential and privileged and shall not be admissible as evidence in any criminal proceeding except the prosecution of an alleged offense of perjury based upon false material contained in the financial statement. The financial statement shall be made available to the prosecution only for purposes of investigation of an alleged offense of perjury based upon false material contained in the financial statement at the conclusion of the proceedings for which such financial statement was required to be submitted.

(b) A person who is detained when the representation in subdivision (a) of Section 27706 begins shall be presumed not financially able to employ counsel and eligible for indigent defense services.

SEC. 3. Section 813 of the Penal Code is amended to read:

813. (a) When a complaint is filed with a magistrate charging a felony originally triable in the superior court of the county in which they sit, if, and only if, the magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground

to believe that the defendant has committed it, the magistrate shall issue a warrant for the arrest of the defendant, except that, upon the request of the prosecutor, a summons instead of an arrest warrant shall be issued.

(b) A summons issued pursuant to this section shall be in substantially the same form as an arrest warrant and shall contain all of the following:

(1) The name of the defendant.

(2) The date and time the summons was issued.

(3) The city or county where the summons was issued.

(4) The signature of the magistrate, judge, justice, or other issuing authority who is issuing the summons with the title of their office and the name of the court or other issuing agency.

(5) The offense or offenses with which the defendant is charged.

(6) The time and place at which the defendant is to appear.

(7) Notification that the defendant is to complete the booking process on or before their first court appearance, as well as instructions for the defendant on completing the booking process.

(8) A provision for certification by the booking agency that the defendant has completed the booking process which shall be presented to the court by the defendant as proof of booking.

(9) Notification of the defendant's right to counsel, the right to the assistance of counsel at no expense if the defendant is not financially able to employ counsel, and the contact information for the public defender or, if there is no public defender, the indigent defense provider for the county.

(c) If a defendant has been properly served with a summons and thereafter fails to appear at the designated time and place, a bench warrant for arrest shall issue. In the absence of proof of actual receipt of the summons by the defendant, a failure to appear shall not be used in any future proceeding.

(d) A defendant who responds to a summons issued pursuant to this section and who has not been booked as provided in subdivision (b) shall be ordered by the court to complete the booking process.

(e) The prosecutor shall not request the issuance of a summons in lieu of an arrest warrant as provided in this section under any of the following circumstances:

(1) The offense charged involves violence.

(2) The offense charged involves a firearm.

(3) The offense charged involves resisting arrest.

(4) There are one or more outstanding arrest warrants for the person.

(5) The prosecution of the offense or offenses with which the person is charged, or the prosecution of any other offense or offenses would be jeopardized.

(6) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered.

(7) There is reason to believe that the person would not appear at the time and place specified in the summons.

SEC. 4. Section 825 of the Penal Code is amended to read:

825. (a) (1) Except as provided in paragraph (2), the defendant shall in all cases be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after their arrest, excluding Sundays and holidays.

(2) If the 48 hours prescribed by paragraph (1) expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following. If the 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session, and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday.

(b) After the arrest, an attorney at law entitled to practice in the courts of record of California, or an attorney's representative, may, at the request of the prisoner or a relative of the prisoner, visit the prisoner. An officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. An officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of five hundred dollars ($500), to be recovered by action in a court of competent jurisdiction.

SEC. 5. Section 851.5 of the Penal Code is amended to read:

851.5. (a) (1) Immediately upon being booked and, except where physically impossible, no later than three hours after arrest, an arrested person has the right to make at least three completed telephone calls, as described in subdivision (b).

(2) The arrested person shall be entitled to make at least three calls at no expense if the calls are completed to telephone numbers within the local calling area or at their own expense if outside the local calling area.

(b) At a police facility or place where an arrested person is detained, the arresting or booking officer shall verbally inform the arrested person of the following information, and a sign containing the following information in bold block type shall be posted in a conspicuous place:

The arrested person has the right to free telephone calls, both during and outside of business hours, within the local calling area, or at their own expense if outside the local calling area, to three of the following:

(1) An attorney of their choice or, if they have no funds, the public defender or other attorney assigned by the court to assist indigents, whose telephone number shall be posted. This telephone call shall not be monitored, eavesdropped upon, or recorded.

(2) A bail bondsman.

(3) A relative or other person.

(c) As soon as practicable upon being arrested but, except where physically impossible, no later than three hours after arrest, the arresting or booking officer shall inquire as to whether the arrested person is a custodial parent with responsibility for a minor child, or is responsible for providing care to another household member. The arresting or booking officer shall notify the arrested person who is a custodial parent with responsibility for a minor child or who is responsible for providing care for another household member that they are entitled to, and may request to, make two additional telephone calls at no expense if the telephone calls are completed to telephone numbers within the local calling area, or at their own expense if outside the local calling area, to a relative or other person for the purpose of arranging for the care of the minor child or household member in the arrested person's absence.

(d) At a police facility or place where an arrested person is detained, a sign containing the following information in bold block type shall be posted in a conspicuous place:

The arrested person, if they are a custodial parent with responsibility for a minor child, has the right to two additional telephone calls within the local dialing area, or at their own expense if outside the local area, for the purpose of arranging for the care of the minor child or children in the parent's absence.

(e) These telephone calls shall be given immediately upon request, or as soon as practicable.

(f) The signs posted pursuant to subdivisions (b) and (d) shall make the specified notifications in English and any non-English language spoken by a substantial number of the public, as specified in Section 7296.2 of the Government Code, who are served by the police facility or place of detainment.

(g) The rights and duties set forth in this section shall be enforced regardless of the arrested person's immigration status.

(h) This provision shall not abrogate a law enforcement officer's duty to advise a suspect of their right to counsel or of any other right.

(i) Any public officer or employee who willfully deprives an arrested person of any right granted by this section is guilty of a misdemeanor.

(j) Immediately upon booking, and no later than two hours after the arrest, the arresting or booking officer shall notify the public defender or, if there is no public defender, the indigent defense provider for the county, that the arrested person is in custody.

SEC. 6. Section 853.6 of the Penal Code, as amended by Section 1 of Chapter 856 of the Statutes of 2022, is amended to read:

853.6. (a) (1) When a person is arrested for an offense declared to be a misdemeanor, including a violation of a city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter, although nothing prevents an officer from first booking an arrested person pursuant to subdivision (g). If the person is released, the officer or the officer's superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. The notice shall also include notification of the defendant's right to counsel, the right to the assistance of counsel at no expense if the defendant is not financially able to employ counsel, and the contact information for the public defender or, if there is no public defender, the indigent defense provider for the county. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or the officer's superior determines that the person should be released, the officer or the officer's superior shall prepare a written notice to appear in a court.

(2) When a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

(3) This subdivision does not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:

(A) Paragraph (1) of subdivision (e) of Section 243.

(B) Section 273.5.

(C) Section 273.6, if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

(D) Section 646.9.

(4) This subdivision shall not affect a defendant's ability to be released on bail or on their own recognizance, except as specified in Section 1270.1.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give their written promise to appear in court as specified in the notice by signing the duplicate notice, which shall be retained by the officer, and the officer may require the arrested person, if the arrested person has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrested person, a person or entity shall not sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) (A) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

(B) If the duplicate notice is filed with the prosecuting attorney, the prosecuting attorney, within their discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the

prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

(C) Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in the magistrate's judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by the magistrate in the form set forth in Section 815a. The defendant may, prior to the date upon which the defendant promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in the magistrate's discretion, order that further proceedings shall not be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and the defendant has previously been convicted of a violation of that section or a violation that is punishable under that section, except when the magistrate finds that undue hardship will be imposed upon the defendant by requiring the defendant to appear, the magistrate may declare the bail forfeited and order that further proceedings not be had in the case.

(D) Upon the making of the order that further proceedings not be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) A warrant shall not be issued for the arrest of a person who has given a written promise to appear in court, unless and until the person has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment, or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person at the scene or at the arresting agency prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency, at the time of booking or fingerprinting, shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that the defendant was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which the officer has taken custody of a person pursuant to Section 847.

(i) When a person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth in this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting officer shall indicate, on a form to be established by the officer's employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that they could have been a danger to themselves or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for their own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

(10) (A) The person was subject to Section 1270.1.

(B) The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release the arrested person from custody before trial.

(11) The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months.

(12) There is probable cause to believe that the person arrested is guilty of committing organized retail theft, as defined in subdivision (a) of Section 490.4.

(j) (1) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

(2) Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or a copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

(3) If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

(4) If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

(5) A personal relationship with any officer, public official, or law enforcement agency shall not be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through the person's local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles

determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrested person who received the citation or notice to appear be found.

(l) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

(m) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 7. Section 853.6 of the Penal Code, as added by Section 2 of Chapter 856 of the Statutes of 2022, is amended to read:

853.6. (a) (1) When a person is arrested for an offense declared to be a misdemeanor, including a violation of a city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter, however an officer may first book an arrested person pursuant to subdivision (g). If the person is released, the officer or the officer's superior shall prepare, in duplicate, a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. The notice shall also include notification of the defendant's right to counsel, the right to the assistance of counsel at no expense if the defendant is not financially able to employ counsel, and the contact information for the public defender or, if there is no public defender, the indigent defense provider for the county. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or the officer's superior determines that the person should be released, the officer or the officer's superior shall prepare a written notice to appear in a court.

(2) When a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

(3) This subdivision shall not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:

(A) Paragraph (1) of subdivision (e) of Section 243.

(B) Section 273.5.

(C) Section 273.6, if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

(D) Section 646.9.

(4) This subdivision does not affect a defendant's ability to be released on bail or on their own recognizance, except as specified in Section 1270.1.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give their written promise to appear in court as specified in the notice by signing the duplicate notice, which shall be retained by the officer. The officer may require the arrested person, if the arrested person has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrested person, a person or entity may not sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the person signing the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) (A) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

(B) If the duplicate notice is filed with the prosecuting attorney, the prosecuting attorney, within their discretion, may initiate prosecution by filing the notice or a formal complaint with the

magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

(C) Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in the magistrate's judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by the magistrate in the form set forth in Section 815a. The defendant may, prior to the date upon which the defendant promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. When the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in the magistrate's discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and the defendant has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring the defendant to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

(D) Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) A warrant shall not be issued for the arrest of a person who has given a written promise to appear in court, unless and until the person has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person at the scene or at the arresting agency prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency, at the time of booking or fingerprinting, shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that the defendant was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant

provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which the officer has taken custody of a person pursuant to Section 847.

(i) When a person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting officer shall indicate, on a form to be established by the officer's employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that they could have been a danger to themselves or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for their own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

(10) (A) The person was subject to Section 1270.1.

(B) The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release the arrested person from custody before trial.

(j) (1) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

(2) A person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

(3) If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

(4) If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

(5) A personal relationship with any officer, public official, or law enforcement agency shall not be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through the person's local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear, or a copy thereof, back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrested person who received the citation or notice to appear be found.

(l) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

(m) This section shall become operative January 1, 2026.

SEC. 8. Section 975 is added to the Penal Code, to read:

975. (a) The public defender or indigent defense provider shall individually and confidentially advise a person who has been cited, summoned, or arrested for a misdemeanor or felony on the importance of the right to counsel, including potential collateral consequences and the right to the assistance of counsel at no expense if the defendant is not financially able to employ counsel.

(b) The court shall ensure that the requirements of this section are met prior to accepting a waiver of counsel.

(c) The individual advisal described in subdivision (a) shall occur in advance of the defendant's initial arraignment and shall not delay a court date set for the defendant, unless the defendant consents to the delay.

SEC. 9. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county:

(1) In a county or city and county in which there is no public defender.

(2) In a county of the first, second, or third class where there is no contract for criminal defense services between the county and one or more responsible attorneys.

(3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.

(4) In a county of the first, second, or third class where attorneys contracted by the county are unable to represent the person accused.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total

amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the assigned private counsel shall perform the duties required of the public defender pursuant to subdivision (a) of Section 27706 of the Government Code. The county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(d) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, and if the quality of representation provided by the second public defender is comparable to the quality of representation provided by the public defender, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the second public defender or a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(f) In any case in which counsel is assigned as provided in subdivision (a), that counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator. It is the intent

of the Legislature in enacting this subdivision to equalize any disparity that exists between the ability of private, court-appointed counsel and investigators, and public defenders and public defender investigators, to represent their clients. This subdivision is not intended to grant to private investigators access to any confidential Department of Motor Vehicles' information not otherwise available to them. This subdivision is not intended to extend to private investigators the right to issue subpoenas.

(g) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

(1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.

(2) The court finds that the interests of justice and economy will be best served by unitary representation.

(3) Counsel appointed in the first county consents to the appointment.

(h) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in a misdemeanor case, a person who desires but is unable to employ counsel. Appointment of counsel in an infraction case is governed by Section 19.6.

(j) As used in this section, "county of the first, second, or third class" means the county of the first class, county of the second class, and county of the third class as provided by Sections 28020, 28022, 28023, and 28024 of the Government Code.

SEC. 10. Section 1018 of the Penal Code is amended to read:

1018. (a) Unless otherwise provided by law, every plea shall be entered or withdrawn by the defendant in open court. A plea of guilty of a felony for which the maximum punishment is death, or life imprisonment without the possibility of parole, shall not be received from a defendant who does not appear with counsel, nor shall that plea be received without the consent of the defendant's counsel. A plea of guilty of a felony for which the maximum punishment is not death or life imprisonment without the possibility of parole, or a misdemeanor, shall not be accepted from a defendant who does not appear with counsel unless the ~~consultation~~ **advisal** described in Section 975 has occurred and the court, in the presence of counsel and the defendant, first fully informs the defendant through an individualized colloquy and in writing of the right to counsel and the

court finds that the defendant understands the right to counsel and freely waives it, and then only if the defendant has expressly stated in open court and in writing, to the court, that they do not wish to be represented by counsel. On application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court may, and in case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. Upon indictment or information against a corporation a plea of guilty may be put in by counsel. This section shall be liberally construed to effect these objects and to promote justice.

(b) There shall be a presumption that a plea taken without counsel is not knowing, intelligent, and voluntary in violation of the Fifth Amendment to the United States Constitution. ~~This presumption shall only be overcome if the defendant has waived counsel pursuant to the requirements of subdivision (a) and the consultation pursuant to Section 975 has occurred.~~ The court retains jurisdiction to hear a motion to vacate a conviction pursuant to this subdivision at any time after the conviction.

(c) A prosecutor or a judge shall not communicate a plea offer, disposition, or resolution on a pending charge or charge where prosecution is being considered to a defendant unless counsel is present, or unless the ~~consultation~~ **advisal** pursuant to Section 975 has occurred and the defendant has waived counsel pursuant to the requirements of subdivision (a). In a case in which the defendant has waived counsel pursuant to the requirements of subdivision (a), only a prosecutor or a judge shall communicate a plea offer to a defendant.

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: April 25, 2023
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1402 (Megan Dahle) – As Amended March 30, 2023

SUMMARY: Prohibits costs for the medical evidentiary portion of a child abuse or neglect examination from being charged directly or indirectly to the victim. Specifically, **this bill**:

1) Requires the costs associated with the medical evidentiary examination of a victim of child physical abuse or neglect to be separate from diagnostic treatment and procedure costs associated with medical treatment.

2) Prohibits costs for the medical evidentiary portion of the examination from being charged directly or indirectly to the victim of child physical abuse or neglect.

3) Provides that each county's board of supervisors shall authorize a designee to approve the Sexual Assault Response Team (SART), Sexual Assault Forensic Exam (SAFE) teams, or other qualified medical evidentiary examiners to receive reimbursement through the Office of Emergency Services (OES) for the performance of medical evidentiary examinations for victims of child physical abuse or neglect and shall notify OES of this designation.

4) States that the costs associated with these medical evidentiary exams shall be funded by the state, subject to appropriation by the Legislature.

5) Requires each county's designated SART, SAFE, or other qualified medical evidentiary examiners to submit invoices to OES, who shall administer the program. A flat reimbursement rate shall be established.

6) Specifies that within one year upon initial appropriation, OES shall establish a 60-day reimbursement process. OES shall assess and determine a fair and reasonable reimbursement rate to be reviewed every five years.

7) Prohibits reduced reimbursement rates based on patient history or other reasons.

8) Allows victims of child physical abuse or neglect to receive a medical evidentiary exam outside of the jurisdiction where the crime occurred and requires that county's approved SART, SAFE teams, or qualified medical evidentiary examiners to be reimbursed for the performance of these exams.

EXISTING LAW:

1) Requires OES to, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California

District Attorneys Association, the California State Sheriffs' Association, the California Peace Officers Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, to establish medical forensic forms, instructions, and examination protocols for victims of child physical abuse or neglect using as a model the form and guidelines developed for sexual assault medical evidentiary examinations. (Pen. Code, § 11171, subd. (b).)

2) Specifies that the forms shall include, but not be limited to, a place for notation concerning each of the following:

   a) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures;

   b) Addressing relevant consent issues, if indicated;

   c) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history;

   d) The performance of a physical examination for evidence of child physical abuse or neglect;

   e) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures;

   f) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated;

   g) Procedures for the preservation and disposition of evidence;

   h) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays; and,

   i) An assessment as to whether there are findings that indicate physical abuse or neglect. (Pen. Code, § 11171, subd. (c).)

3) Provides that the forms shall become part of the patient's medical record pursuant to guidelines established by the advisory committee of OES and subject to the confidentiality laws pertaining to the release of medical forensic examination records. (Pen. Code, § 11171, subd. (d).)

4) Requires that the forms be made accessible for use on the Internet. (Pen. Code, § 11171, subd. (e).)

5) Makes sexual assault forensic medical examinations reimbursable. (Pen. Code, § 13823.95.)

6) Makes domestic violence forensic medical examinations reimbursable. (Pen. Code, § 11161.2.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1402 continues the important work accomplished in AB 925 (M. Dahle) which authorized the appropriate local law enforcement agency to seek reimbursement from the Office of Emergency Services (OES), using the specified federal funds for the cost of conducting the medical evidentiary examination of a sexual assault victim. AB 1402 would simply allow child abuse exams to also be eligible for reimbursement."

2) **Need for this Bill:** According to information provided by the author's office, "Despite providing reimbursement for the medical forensic examination of domestic violence, adult and pediatric sexual assault, existing law does not provide reimbursement for the medical forensic examination of suspected child physical abuse or neglect. This makes it difficult for clinics and providers to offer this service, especially in rural districts where access is scarce. For example, there is one primary provider of these exams located in Shasta County who covers the territory of seven large counties in the First Assembly District. Victims seeking these exams are forced to travel up to three hours for an exam."

3) **Reimbursement for the Cost of Sexual Assault and Domestic Violence Medical Evidentiary Exams:** The Violence against Women Act (VAWA) affords sexual assault victims the right to obtain a medical evidentiary examination after a sexual assault. The victim may not be charged for the exam. The costs are charged to the local law enforcement agency. Law enforcement can seek reimbursement for cases where the victim is undecided whether to report to the assault to law enforcement. The OES uses discretionary funds from various federal grants to offset the costs of the examination. OES makes a determination on how much the reimbursement shall be under these circumstances and can reassess the reimbursement every 5 years. Law enforcement can also seek reimbursement to offset the costs of conducting an examination when the victim has decided to report the assault to law enforcement. OES makes a determination on how much the reimbursement shall be under these circumstances. OES is to provide reimbursement from funds to be made available upon appropriation for this purpose. (Pen. Code, § 13823.95).

   In AB 2185 (Weber), Chapter 557, Statutes of 2022, the Legislature provided domestic violence victims access to medical evidentiary exams, free of charge, by SART, SAFE teams, or other qualified medical evidentiary examiners. Each county's board of supervisors is required to authorize a designee to approve the SART, SAFE teams, or other qualified medical evidentiary examiners to receive reimbursement through OES for the performance of medical evidentiary examinations for victims of domestic violence. Costs incurred for the medical evidentiary portion of the examination cannot be charged directly or indirectly to the victim. The costs associated with these medical evidentiary exams are to be funded by the state, subject to appropriation by the Legislature, and require the OES to establish a 60-day reimbursement process within one year upon initial appropriation. (Pen. Code, § 11161.2.)

This bill mirrors the process set forth by AB 2185, to provide free medical evidentiary examinations for a victim of child physical abuse or neglect.

4) **Argument in Support**: None on file.

5) **Argument in Opposition**: None on file.

6) **Prior Legislation**:

   a) AB 2185 (Weber), Chapter 557, Statutes of 2022, provided domestic violence victims access to medical evidentiary exams, free of charge, by SART, SAFE teams, or other qualified medical evidentiary examiners.

   b) AB 145 (Committee on Budget), Chapter 80, Statutes of 2021, authorized reimbursements from OES for the costs of conducting medical evidentiary examinations of sexual assault survivors regardless of whether they have decided to report the assault to law enforcement.

   c) AB 925 (Dahle), of the 2021-2022 Legislative Session, would have authorized a law enforcement agency to seek reimbursement from OES, to offset the costs of a medical evidentiary exam of a sexual assault victim who at the time of the examination has decided not to report to law enforcement, and reimburses the law enforcement agency at the same established rate for victims who have decided to report an assault at the time of the examination. AB 925 was not heard in the Senate Appropriations Committee.

   d) AB 334 (Cooper), of the 2017-2018 Legislative Session, would have made a number of changes to existing law regarding sexual assault forensic medical examinations, including the reimbursement rate for exams of survivors who do not aid or otherwise participate with law enforcement. AB 334 was not heard in the Senate Public Safety Committee at the request of the author.

   e) SB 580 (Figueroa), Chapter 249, Statutes of 2003, required the Office of Criminal Justice Planning (OCJP) to develop a standard form for health practitioners to report any physical injury resulting from suspected abusive conduct, and another standard form for the forensic examination of victims of child abuse or neglect.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: April 25, 2023
Counsel: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1420 (Berman) – As Amended March 23, 2023

As Proposed to be Amended in Committee

SUMMARY: Expands the authority of the Department of Justice (DOJ) to conduct firearm dealer inspections to ensure compliance with all applicable state laws and to assess fines for their non-compliance. Specifically, **this bill**:

1) Authorizes the DOJ to conduct firearm dealer inspections to ensure compliance with specified statutes, as well as any other applicable state laws.

2) Expands the statute requiring the DOJ to maintain and make available specified information regarding firearm dealers found to have violated specified statutes, as well as any other applicable state laws.

3) Authorizes the DOJ to assess civil fines against firearm dealers not only for breaches of specified statutes, but also for any other applicable state laws.

4) Requires the dealer record of sale (DROS) form to include a firearm purchaser's email address starting September 1, 2025.

EXISTING LAW:

1) Requires a person to hold a firearm dealer's license in order to sell, lease, or transfer a firearm. (Pen. Code, § 26500.)

2) Provides that the duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting licensees to sell firearms at retail within the city, county, or city and county. (Pen. Code, § 26705, subd. (a).)

3) Requires a firearms dealer or licensee to meet all the following requirements:

   a) Have a valid federal firearms license;

   b) Have any regulatory or business license, or licenses, required by local government;

   c) Have a valid seller's permit issued by the State Board of Equalization;

   d) Have a certificate of eligibility issued by the DOJ, as specified;

   e) Have a license issued in a specified format; and,

f) Be recorded in the DOJ's centralized list of licensees. (Pen. Code, § 26700.)

4) Requires firearms dealers to secure their inventory in a secure facility on the business premises with trigger locks, or within a locked, fireproof safe or vault when the licensee is not open for business. (Pen. Code, § 26890.)

5) Requires licensed dealers to maintain and make available to law enforcement or the DOJ a firearm transaction record, as specified. (Pen. Code, §§ 26900, 28100.)

6) Authorizes the DOJ to inspect firearms dealers every three years in order to ensure compliance with only specified statutes. (Pen. Code, § 26720, subd. (a).)

7) Requires the DOJ to maintain and make available upon request the number of inspections conducted and the amount of fees collected, as specified, exempted jurisdictions, number of dealers removed from the centralized list of licensees, and the number of dealers found to have violated specified provisions of law with knowledge or with gross negligence. (Pen. Code, § 26725.)

8) Requires the DROS form to include the following information, among other things:

a) Date and time of sale;

b) Make of firearm;

c) Serial number or any assigned identification number or mark;

d) Caliber;

e) Type of firearm;

f) Barrel length;

g) Full name, date of birth, and purchaser's address;

h) Purchaser's phone number;

i) Purchaser's gender;

j) All of the purchaser's legal names or aliases;

k) Yes or no answer to questions inquiring whether the purchaser is prohibited from possessing a firearm;

l) Signature of purchaser;

m) Right thumbprint of the purchaser; and,

n) A statement of the penalties for signing a fictitious name or address, knowingly furnishing any incorrect information, or knowingly omitting any information required to be

provided for the register. (Pen. Code, § 28160.)

9) Provides that the dealer or salesperson must ensure all required information has been obtained and be informed that incomplete information will delay sales. (Pen. Code, § 28175.)

10) Makes it a misdemeanor for a person to furnish a fictitious name or address, or knowingly furnish incorrect information, or knowingly omit any information on the DROS forms. (Pen. Code, § 28250, subd. (a).)

11) Makes it a felony for a prohibited person to knowingly furnish a fictitious name, address, incorrect information, or to omit any information on the DROS forms. (Pen. Code, § 28250, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California has some of the strongest firearm laws in the country and these laws save lives. In 2021, Giffords Law Center showed that California had a 37 percent lower gun death rate than the national average. Having strong firearm laws is important, but it is equally important to ensure the laws are being sufficiently enforced. AB 1420 will ensure that the Department of Justice (DOJ) has the authority to inspect and write citations for any violations related to the governing of the sale, transfer, and storage of firearms.

   "Unfortunately, there are only a handful of statutes that allow for DOJ inspection and even fewer statutes that allow for any sort of civil fines to be issued. Currently, there are multiple instances where the DOJ's compliance units witness serious violations, such as finding assault weapons or evidence of an assault weapons sale, but cannot write any sort of citation because it is beyond the scope of their authority. AB 1420 will ensure the DOJ has the authority and tools to adequately enforce firearms violations. California firearm laws are strong and remedying any violations can save lives."

2) **Firearm Dealers and Compliance with Firearm Laws**: Firearm dealers in California are subject to numerous state and federal laws that they must abide by in order to remain in operation. (Pen. Code, §§ 26500 *et seq.*) Such laws specify the manner in which firearm dealers must keep their records, deliver a firearm, secure and store their inventory, obtain security measures, and so on. (Pen. Code, §§ 17110, 26815, 26890, 28100.) Firearm dealers who do not comply with such laws have been linked to a greater likelihood that firearms from their inventory will be recovered in a crime. (Brady United Against Gun Violence. *A California Case Study: Government Agencies Should Screen Firearms Vendors.* <https://s3.amazonaws.com/brady-static/Procurement-CA-v5.pdf> [as of Apr. 28, 2023] at p. 7.) A November 2000, report from the Alcohol, Tobacco, and Firearms Bureau (ATF) stated that when the ATF inspected the 1% of firearm dealers that supplied almost 60% of guns used in crimes nationwide, the ATF found that 75% of those dealers had violated federal firearm laws, including recordkeeping violations and selling to potential gun traffickers and prohibited persons. (*Ibid.*)

In California, current law requires the DOJ to conduct inspections of firearm dealers every three years to ensure compliance with Penal Code Section 16575 specifically. That Penal Code section lists out a number of other sections in the Penal Code that impose requirements on firearm dealers. However, not all sections that impose requirements on firearms dealers are listed in Penal Code Section 16575. For example, Section 21628.2 of the Business & Professions Code, which requires certain firearm dealer to keep copies of certain firearm consignments or trades, is not listed.. Therefore, the DOJ is technically unable by law to inspect those records. This bill, as introduced, would authorize DOJ to conduct inspections for compliance with specified statutes. As proposed to be amended in committee, this bill would authorize DOJ to inspect for compliance with all applicable state law. The language reflects similar language used in other existing statutes; for example, Penal Code section 27310 allows the DOJ to inspect firearm dealers at gun shows to ensure compliance with "applicable state and federal laws."

3) **Argument in Support**: According to the bill's sponsor, the *Department of Justice*, "In order to operate in California, firearms dealers must have: (1) a Federal Firearms License, (2) a license issued by a county or other local agency, and (3) a Certificate of Eligibility issued by the DOJ. If they have all of these items, they are included on a DOJ-maintained centralized list that allows them to operate their business. Currently, the DOJ can conduct spontaneous, on-site inspections of dealers, but that authority is limited to checking for compliance with the statutes listed in Penal Code section 16575. That list of statutes listed in Section 16575 has not been updated since 2010 despite the passage of additional laws governing firearms dealers since that time. As such, DOJ representatives conducting inspections often observe non-compliance with more recent laws, but do not have the authority to cite for those violations.

   "California has passed some of the strongest gun safety measures in the nation. But those laws only work if we can ensure compliance. AB 1420 will update existing law to expand DOJ's inspection authority to include a more comprehensive list of laws related to the sale, transfer and storage of firearms. Additionally, AB 1420 will include the ability to assess progressive penalties, including civil fines, on dealers that fail to correct violations.

   "The Attorney General is committed to advancing efforts that strengthen California's commonsense gun laws. This bill will further that goal by providing DOJ with the necessary tools to ensure dealers are complying with current law and with DOJ's requests for corrective action."

4) **Argument in Opposition**: None received.

5) **Related Legislation**: SB 377 (Skinner), among other things, would require all state agencies or department to keep records of all unsafe handguns they own, as specified, and would authorize the DOJ to conduct inspections to ensure compliance with the rule. SB 377 is currently in the Senate Appropriations Committee.

6) **Prior Legislation**:

   a) AB 228 (Rodriguez) Chapter 138, Statutes of 2022, required the DOJ to inspect firearm dealers every three years to ensure compliance with specified firearms laws.

b) AB 2061 (Límon) Chapter 273, Statutes of 2020, authorized the DOJ to inspect firearms dealers, ammunition vendors, or manufacturers at gun shows in order to ensure compliance with state and federal firearms laws.

c) AB 2362 (Muratsuchi) Chapter 284, Statutes of 2020, among other things, authorized the DOJ to assess a civil fine against a firearms dealer for a violation of specified rules imposed on firearm dealers.

d) AB 1064 (Muratsuchi), of the 2019-2020 Legislative Session, would have allowed the DOJ to adopt regulations to set fine amounts to be levied against firearms dealers that breach specified provisions related to the sale of firearms. AB 1064 was held in the Assembly Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign
Brady Campaign California
California Department of Justice
Los Angeles Unified School District

Opposition

None.

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 AB-1420 (Berman (A))

Mock-up based on Version Number 98 - Amended Assembly 3/23/23
Submitted by: Mureed Rasool, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 26720 of the Penal Code is amended to read:

26720. (a) The Department of Justice may conduct inspections of dealers at least every three years to ensure compliance with the requirements of this title, including any regulations promulgated to implement this title, and Sections 21628.2, 21636, and 21640 of the Business and Professions ~~Code.~~ **Code and any other applicable state laws.**

(1) Commencing on January 1, 2024, the department shall conduct inspections of all dealers, except a dealer specified in subdivision (c), at least once every three years, to ensure compliance with the requirements of this title, including any regulations promulgated to implement this title, and Sections 21628.2, 21636, and 21640 of the Business and Professions ~~Code.~~ **Code and any other applicable state laws.**

(2) Inspections of dealers pursuant to this subdivision shall include an audit of dealer records that includes a sampling of at least 25 percent but no more than 50 percent of each record type.

(b) The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in Section 26715, including the cost of inspections.

(c) A dealer whose place of business is located in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law is exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program. The department may inspect a dealer who is exempt from mandatory inspections under subdivision (b) to ensure compliance with the requirements of this title, including any regulations promulgated to implement this title, and Sections 21628.2, 21636, and 21640 of the Business and Professions ~~Code.~~ **Code and any other applicable state laws.**

SEC. 3. SECTION 26725 OF THE PENAL CODE IS AMENDED TO READ:

26725. The Department of Justice shall maintain and make available upon request information concerning all of the following:
(a) The number of inspections conducted and the amount of fees collected pursuant to Section 26720.
(b) A listing of exempted jurisdictions, as defined in Section 26720.
(c) The number of dealers removed from the centralized list defined in Section 26715.
(d) The number of dealers found to have violated a provision listed in Section 16575 **and any other applicable state laws,** with knowledge or gross negligence.

SEC. ~~2.~~ 3 Section 26800 of the Penal Code is amended to read:

26800. (a) A license under this chapter is subject to forfeiture for a violation of any of the prohibitions and requirements of this article, except those stated in the following provisions:

(1) Subdivision (c) of Section 26890.

(2) Subdivision (d) of Section 26890.

(3) Subdivision (b) of Section 26900.

(b) The department may assess a civil fine against a licensee, in an amount not to exceed one thousand dollars ($1,000), for any breach of a prohibition or requirement of this title, including any regulations promulgated to implement this title, and Sections 21628.2, 21636, and 21640 of the Business and Professions ~~Code.~~ **and any other applicable state laws.** The department may assess a civil fine, in an amount not to exceed three thousand dollars ($3,000), for a violation of a prohibition or requirement of this article that subjects the license to forfeiture under subdivision (a), for either of the following:

(1) The licensee has received written notification from the department regarding the violation and subsequently failed to take corrective action in a timely manner.

(2) The licensee is otherwise determined by the department to have knowingly or with gross negligence violated the prohibition or requirement.

(c) The department may adopt regulations setting fine amounts and providing a process for a licensee to appeal a fine assessed pursuant to subdivision (b).

(d) Moneys received by the department pursuant to this section shall be deposited into the Dealers' Record of Sale Special Account of the General Fund, to be available, upon appropriation, for expenditure by the department to offset the reasonable costs of firearms-related regulatory and enforcement activities related to the sale, purchase, manufacturing, lawful or unlawful possession, loan, or transfer of firearms pursuant to any provision listed in Section 16580.

(e) This section shall become operative on July 1, 2022.

SEC. 3. Section 28160 of the Penal Code is amended to read:

28160. (a) For all firearms, the register or record of electronic transfer shall include all of the following information:

(1) The date and time of sale.

(2) The make of firearm.

(3) Peace officer exemption status pursuant to the provisions listed in subdivision (c) of Section 16585, and the agency name.

(4) Any applicable waiting period exemption information.

(5) California Firearms Dealer number issued pursuant to Article 1 (commencing with Section 26700) of Chapter 2.

(6) The purchaser's firearm safety certificate number issued pursuant to Article 2 (commencing with Section 31610) of Chapter 4 of Division 10 of this title.

(7) Manufacturer's name if stamped on the firearm.

(8) Model name or number, if stamped on the firearm.

(9) Serial number, if applicable.

(10) Other number, if more than one serial number is stamped on the firearm.

(11) Any identification number or mark assigned to the firearm pursuant to Section 23910.

(12) If the firearm is not a handgun and does not have a serial number, identification number, or mark assigned to it, a notation as to that fact.

(13) Caliber.

(14) Type of firearm.

(15) If the firearm is new or used.

(16) Barrel length.

(17) Color of the firearm.

(18) Full name of purchaser.

(19) Purchaser's complete date of birth.

(20) Purchaser's local address.

(21) If current address is temporary, complete permanent address of purchaser.

(22) Purchaser's email address.

(23) Identification of purchaser.

(24) Purchaser's place of birth (state or country).

(25) Purchaser's complete telephone number.

(26) Purchaser's occupation.

(27) Purchaser's gender.

(28) Purchaser's physical description.

(29) All legal names and aliases ever used by the purchaser.

(30) Yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a felony as described in Chapter 2 (commencing with Section 29800) or an offense described in Chapter 3 (commencing with Section 29900) of Division 9 of this title, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, and whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code.

(31) Signature of purchaser.

(32) Signature of salesperson, as a witness to the purchaser's signature.

(33) Salesperson's certificate of eligibility number, if the salesperson has obtained a certificate of eligibility.

(34) Name and complete address of the dealer or firm selling the firearm as shown on the dealer's license.

(35) The establishment number, if assigned.

(36) The dealer's complete business telephone number.

(37) Any information required by Chapter 5 (commencing with Section 28050).

(38) Any information required to determine whether subdivision (f) of Section 27540 applies.

(39) A statement of the penalties for signing a fictitious name or address, knowingly furnishing any incorrect information, or knowingly omitting any information required to be provided for the register.

(40) A statement informing the purchaser, after their ownership of a firearm, of all of the following:

(A) Upon their application, the Department of Justice shall furnish them any information reported to the department as it relates to their ownership of that firearm.

(B) The purchaser is entitled to file a report of their acquisition, disposition, or ownership of a firearm with the department pursuant to Section 28000.

(C) Instructions for accessing the department's internet website for more information.

(41) For transactions on and after January 1, 2015, the purchaser's firearm safety certificate number, except that in the case of a handgun, the number from an unexpired handgun safety certificate may be used.

(b) The purchaser shall provide the purchaser's right thumbprint on the register in a manner prescribed by the department. No exception to this requirement shall be permitted except by regulations adopted by the department.

(c) The firearms dealer shall record on the register or record of electronic transfer the date that the firearm is delivered, together with the firearm dealer's signature indicating delivery of the firearm.

(d) The purchaser shall sign the register or the record of electronic transfer on the date that the firearm is delivered to them.

(e) Paragraph (22) of subdivision (a) of this section shall become operative on September 1, 2025.

Date of Hearing: April 25, 2023
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1497 (Haney) – As Amended March 30, 2023

SUMMARY: Creates additional rights for victims of human trafficking or intimate partner or sexual abuse, including extending vacatur relief and the affirmative defense to violent felonies committed as the result of being a victim. Specifically, **this bill**:

1) Makes the affirmative defense for victims of human trafficking, intimate partner violence, and sexual violence applicable to all crimes the defendant was coerced to commit, deleting the provision which excluded crimes on the violent felonies list.

2) Makes human trafficking, intimate partner violence, and sexual violence vacatur relief applicable to all crimes the defendant was coerced to commit, deleting provisions which exclude crimes on the violent felonies list.

3) Makes conforming changes to align the procedures for intimate partner violence or sexual violence vacatur relief with that of human trafficking vacatur relief, as follows:

   a) Prohibits a court from refusing to hear the petition to vacate a conviction committed while the petitioner was the victim of intimate partner violence or sexual violence on the basis of the petitioner's outstanding fines and fees or failure to meet the conditions of probation;

   b) Specifies that with the exception of victim restitution, the collection of fines imposed as a result of an offense that is the subject of the petition be stayed while the petition is pending;

   c) States that if the vacatur petition is unopposed, the petitioner may appear at all hearings on the petition, if any, by counsel;

   d) Specifies that if the vacatur petition is opposed and the court orders a hearing for relief on the petition, the petitioner shall appear in person unless the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear by telephone, videoconference, or by other electronic means established by the court;

   e) States that a vacatur petition can be made and heard at any time after the person has ceased to be a victim of intimate partner violence or sexual violence, or at any time after the petitioner has sought services for being a victim, whichever occurs later;

   f) Provides that the right to petition for vacatur relief does not expire with the passage of time;

g) Requires that, if the court issues an order for vacatur relief, it shall also order specified entities to seal and destroy the arrest records;

h) Requires the specified entities to, within one year of the date of arrest, or 90 days from the date of the court order, whichever is later, to seal the records;

i) Requires the agencies to thereafter destroy the records with the order within one year of the date of the court order; and,

j) Requires that, if the court issues an order for vacatur relief, it shall also provide the petitioner and their counsel with a copy of any form the court submits to any agency related to the sealing and destruction of arrest records.

4) Clarifies the applicable law regarding when a court decides whether the aggravating circumstances outweigh the mitigating circumstances, making presumptive imposition of the low term contrary to the interests of justice despite the fact that psychological, physical, or childhood trauma, youthfulness, or being or having been a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the alleged offense, as follows:

a) Provides that a court may only consider those aggravating circumstances that have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial;

b) States that except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the aggravating circumstance alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements; and,

c) Specifies that the jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.

d) Prohibits the court, except as otherwise provided by law and unless contrary to the interests of justice, from imposing consecutive terms of imprisonment for two or more felonies where psychological, physical, or childhood trauma, youthfulness, or being or having been a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the alleged offense.

e) Prohibits the court, unless contrary to the interest of justice, from imposing a term of imprisonment for any enhancement that is found true where psychological, physical, or childhood trauma, youthfulness, or being or having been a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the alleged offense.

f) Makes evidence that an individual suffers from a mental disease, mental defect, or mental disorder admissible on the issue of whether or not the accused actually formed the required mental state for the crime that is charged, including whether or not the accused committed a willful act, premeditated, deliberated, harbored malice aforethought, acted knowingly, acted

maliciously, or acted with conscious disregard for human life.

EXISTING LAW:

1) Authorizes a person who was arrested for, or convicted of, any nonviolent offense, as specified, committed while they were a victim of human trafficking, to petition the court for vacatur relief of their convictions and arrests. (Pen. Code, § 236.14.)

2) Authorizes a person who was arrested for or convicted of any nonviolent offense, as specified, committed while they were a victim of intimate partner violence or sexual violence, to petition the court for vacatur relief of their convictions and arrests. (Pen. Code, § 236.15.)

3) Provides that the petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking, intimate partner violence, or sexual violence which demonstrates that the person lacked the requisite intent to commit the offense. (Pen. Code, §§ 236.14, subd. (a); 236.15, subd. (a).)

4) Provides that, after considering the totality of the evidence presented, the court may vacate the conviction and the arrest and issue an order, as specified. (Pen. Code, §§ 236.14, subd. (g); 236.15, subd. (g).)

5) Requires the court, in issuing an order of vacatur, to do the following:

   a) Set forth a finding that the petitioner was a victim of human trafficking, intimate partner violence or sexual violence when they committed the offense and therefore lacked the requisite intent;

   b) Set aside the verdict of guilty or the adjudication and dismiss the accusation or information against the petitioner as invalid due to a legal defect at the time of arrest or conviction; and,

   c) Notify the Department of Justice (DOJ) that the petitioner was a victim of human trafficking, intimate partner violence or sexual violence when they committed the crime and of the relief that has been ordered. (Pen. Code, §§ 236.14, subd. (h); 236.15, subd. (h).)

6) Provides that intimate partner violence or sexual violence vacatur does not relieve the petitioner of any financial restitution order that directly benefits the victim of a nonviolent crime, unless it has already been paid. (Pen. Code, § 236.15, subd. (i).)

7) Specifies that with the exception of victim restitution, the collection of fines imposed as a result of a nonviolent offense that is the subject of a petition for human trafficking vacatur releif be stayed while the petition is pending. (Pen. Code, § 236.14, subd. (i).)

8) Provides that when the court orders the conviction vacated based on intimate partner violence or sexual violence, the court shall also order the law enforcement agency having jurisdiction over the offense, DOJ, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order

to seal and destroy the records for three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records. The court shall also provide the petitioner a copy of any court order concerning the destruction of the arrest records. (Pen. Code, § 236.15, subd. (k).)

9) Provides that if the court issues an order for trafficking vacatur it shall also order any law enforcement agency that has taken action or maintains records because of the offense including, but not limited to, departments of probation, rehabilitation, corrections, and parole, to seal and destroy their records. (Pen. Code, § 236.14, subd. (k)(1).)

10) Requires the specified entities to seal their records within one year of the date of arrest, or 90 days from the date of the court order, whichever is later. (Pen. Code, § 236.14, subd. (k)(2).)

11) Requires agencies to subsequently destroy the records within one year of the date of the court order. (Pen. Code, § 236.14, subd. (k)(2).)

12) Requires that, if the court issues an order for human trafficking vacatur relief, it shall also provide the petitioner and their counsel with a copy of any form the court submits to any agency related to the sealing and destruction of arrest records. DOJ shall notify the petitioner and their counsel that the department has complied with the order to seal the arrest records by the applicable deadline. (Pen. Code, § 236.14, subd. (k)(3)-(4).)

13) Requires an intimate partner violence or sexual violence vacatur petition to be made and heard within a reasonable time after the person has ceased to be a victim, or within a reasonable time after the petitioner has sought services for being a victim, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of intimate partner violence and sexual violence who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this relief. (Pen. Code, § 236.15, subd. (l).)

14) States that a human trafficking vacatur petition can be made and heard at any time after the person has ceased to be a victim, or at any time after the petitioner has sought services for being a victim, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of human trafficking who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this relief. (Pen. Code, § 236.14, subd. (l).)

15) Provides that the right to petition for human trafficking vacatur relief on a non-violent conviction does not expire with the passage of time. (Pen. Code, § 236.14, subd. (l).)

g) Prohibits the court from refusing to hear a human trafficking vacatur petition on the basis of the petitioner's outstanding fines and fees or the petitioner's failure to meet the conditions of probation. (Pen. Code, § 236.14, subd. (l).)

h) Provides that an intimate partner violence or sexual violence vacatur petitioner, or their attorney, may be excused from appearing in person at a hearing for relief only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear telephonically, via videoconference, or by other electronic means established by the court. (Pen. Code, § 236.15, subd. (n).)

i) Provides that if a human trafficking vacatur petition is unopposed, the petitioner may appear at all hearings on the petition, if any, by counsel. If the petition is opposed and the court orders a hearing for relief on the petition, the petitioner shall appear in person unless the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear by telephone, videoconference, or by other electronic means established by the court. . (Pen. Code, § 236.14, subd. (n).)

16) Defines a "nonviolent offense" for the purposes of vacatur relief, as one that does not appear on California's violent felony list. (Pen. Code, §§ 236.14, subd. (t)(1), 236.15, subd. (t)(1).)

17) Defines "Vacate" to mean that the arrest and any adjudications or convictions suffered by the petitioner which are deemed not to have occurred and that all records in the case are sealed and destroyed. (Pen. Code, §§ 236.14, subd. (t)(2), 236.15, subd. (t)(2).)

18) Provides that, a petitioner who has obtained vacatur relief may lawfully deny or refuse to acknowledge the arrest, conviction, or adjudication that is set aside pursuant to the order. (Pen. Code, §§ 236.14, subd. (o); 236.15, subd. (o).)

19) Provides that, in addition to any other affirmative defense, it is a defense to a crime that the person was coerced to commit the offense as a direct result of being a human trafficking, intimate partner violence or sexual violence victim at the time of the offense and in reasonable fear of harm. (Pen. Code, §§ 236.23, subd. (a), 236.24, subd. (a).)

20) States that this affirmative defense does not apply to a violent felony. (Pen. Code, §§ 236.23, subd. (a), 236.24, subd. (a).)

21) Establishes the standard of proof for the human trafficking affirmative defense as the preponderance of evidence standard. (Pen. Code, §§ 236.23, subd. (b), 236.24, subd. (b).)

22) States that certified records from federal, state, tribal, or local court or government certifying agencies for documents such as U or T visas, may be presented to establish the affirmative defense. (Pen. Code, §§ 236.23, subd. (c), 236.24, subd. (c).)

23) Provides that the human trafficking affirmative defense can be asserted at any time before entry of plea or before the end of a trial. The defense can also be determined at the preliminary hearing. (Pen. Code, §§ 236.23, subd. (d), 236.24, subd. (d).)

24) Entitles a person who successfully raises the human trafficking affirmative defense to the following relief:

    a) Sealing of all court records in the case;

    b) Release from all penalties and disabilities resulting from the charge, and all actions that led to the charge shall be deemed not to have occurred; and,

    c) Permission to attest in all circumstances that they have never been arrested for, or charged with the subject crime, including in financial aid, housing, employment, and loan applications. (Pen. Code, §§ 236.23, subd. (e), 236.24, subd. (e).)

25) Provides that records sealed after prevailing on the human trafficking affirmative defense may still be accessed by law enforcement for subsequent investigatory purposes involving persons other than the defendant. (Pen. Code, §§ 236.23, subd. (e)(1)(B), 236.24, subd. (e)(1)(B).)

26) States that, in any juvenile delinquency proceeding, if the court finds that the alleged offense was committed as a direct result of being a victim of human trafficking then it shall dismiss the case and automatically seal the case records. (Pen. Code, §§ 236.23, subd. (f), 236.24, subd. (f).)

27) States that the person may not be thereafter charged with perjury or otherwise giving a false statement based on the above relief. (Pen. Code, §§ 236.23, subd. (e)(3)(C), 236.24, subd. (e)(3)(C).)

28) Abolishes the defense of diminished capacity. In a criminal action, as well as any juvenile court proceeding, evidence concerning an accused person's intoxication, trauma, mental illness, disease, or defect is not admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged. (Pen. Code, § 25, subd. (a).)

29) Provides that all persons are capable of committing crimes except those belonging to specified classes which includes persons (unless the crime is punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused. (Pen. Code, § 26.)

30) Prohibits introducing evidence of mental disease, mental defect, or mental disorder to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged. (Pen. Code, § 28, subd. (a).)

31) Provides that as a matter of public policy there shall be no defense of diminished capacity, diminished responsibility, or irresistible impulse in a criminal action or juvenile adjudication hearing. (Pen. Code, § 28, subd. (b).)

32) Provides that when a judgment of imprisonment is imposed and specifies three possible terms, the court shall, in its discretion, impose the middle term sentence unless there are circumstances in aggravation that justify a term of imprisonment in excess of the middle term. (Pen. Code, § 1170, subd. (b)(1) & (b)(2).)

33) Specifies that with the exception of a certified prior conviction, the facts underlying those aggravated circumstances must have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at a jury or court trial. (Pen. Code, § 1170, subd. (b)(2).)

34) Provides that except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise

authorized by law, upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense. (Pen. Code, § 1170, subd. (b)(2).)

35) Requires the court to impose the lower term where any of the following was a contributing factor in the commission of the offense, unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice:

   a) The person has experienced psychological, physical, or childhood trauma, including but not limited to abuse, neglect, exploitation, or sexual violence;

   b) The person is a youth, or was a youth, as defined, at the time of the commission of the offense; or,

   c) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking. (Pen. Code, § 1170, subd. (b)(6).)

36) Specifies this does not prohibit the court from imposing the lower term even if none of these contributing factors is present. (Pen. Code, § 1170, subd. (b)(7).)

37) Requires the court, when imposing a sentence for a felony, to also impose, in addition and consecutive to the offense of which the person has been convicted, the additional terms provided for any applicable enhancements. (Pen. Code, § 1170.1, subd. (d)(1).)

38) Provides that if the enhancement is punishable by one of three terms, the court shall, in its discretion, order imposition of a sentence not to exceed the middle term, unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term. (Pen. Code, § 1170.1, subd. (d)(1) & (d)(2).

39) Specifies that the facts underlying those circumstances must have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at a jury or court trial. (Pen. Code, § 1170.1, subd. (d)(2).)

40) Requires the court to also impose any other additional term that the court determines in its discretion or as required by law shall run consecutive to the term imposed for the underlying offense. Requires the court to apply the sentencing rules of the Judicial Council. (Pen. Code, § 1170.1, subd. (d)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Victims of domestic violence, human trafficking, sexual violence, and other violence need protection, healing, and care to rebuild their lives when they are involved in criminal cases – not further criminalization and punishment from our legal system. California law still excludes many survivors of violence

from sharing relevant information about their victimization and from accessing legal protections and remedies during court processes. This bill seeks to ensure that no survivors of violence – particularly Black and brown women, youth, queer, or transgender individuals – are excluded from legal remedies that open up pathways to healing and a fresh start for them and their families."

2) **Vacatur Relief**: Penal Code section 236.14 provides post-conviction relief to human trafficking victims by vacating nonviolent arrests, charges and convictions that were a direct result of human trafficking. Penal Code section 236.15 extends the same form of post-conviction relief to intimate partner violence and/or sexual violence victims by vacating nonviolent arrests, charges and convictions that were a direct result of the intimate partner or sexual violence. "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed. (Pen. Code, §§ 236.14, subd. (t)(2), 236.15, subd. (t)(2).) The purpose of these laws is to provide relief for individuals who have criminal records as a result of their exploitation, by vacating nonviolent criminal offenses that were committed by human trafficking victims at the behest of their traffickers. (See, Assembly Public Safety Analysis for SB 823 (Block), Chapter 650, Statutes of 2016.)

   AB 262 (Patterson), Chapter 193, Statutes of 2021, provided additional legal rights when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking. AB 262 also allowed a person, when petitioning to vacate a non-violent conviction because the petitioner was a victim of human trafficking and the conviction was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel and removed time limitations to bring the petitions.

   This bill would apply these changes to the vacatur relief available to victims of intimate partner violence and sexual violence, which otherwise mirrors the vacatur relief provided to victims of human trafficking.

   This bill would also extend the human trafficking/intimate partner violence/sexual violence vacatur relief to crimes on the violent felonies list.

3) **Human Trafficking Affirmative Defense**: Penal Code section 236.23 provides an affirmative defense to a crime that is not violent if the person accused establishes by a preponderance of evidence that they were "coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm." (Pen. Code, § 236.23, subds. (a) & (b).) In addition to being a non-violent offense, the following elements must be met for the defense to apply: "(i) the accused was a victim of human trafficking at the time the offense was committed, (ii) the accused was coerced to commit the offense as a direct result of being a human trafficking victim, (iii) the accused had a reasonable fear of harm when the offense was committed." (*In re D.C.* (2021) 60 Cal.App.5th 915, 920.) Penal Code section 236.24 provides such an affirmative defense for victims of intimate partner violence or sexual violence.

   In addition to these affirmative defenses, California's has a duress defense. The duress "is available as a defense to defendants who commit a crime 'under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if

they refused.' (Pen. Code, § 26, subd. Six; *People v. Otis* (1959) 174 Cal.App.2d 119, 124-125 [(*Otis*)].)" (*People v. Saavedra* (2007) 156 Cal.App.4th 561, 567.) However, duress is not a defense to murder. (Pen. Code, § 26.) The policy behind that is that it isn't better to murder an innocent person to prevent being murdered yourself. (*People v. Anderson* (2002) 28 Cal.4th 767, 772.)

California also has a necessity defense. The necessity defense is available to a defendant who "'violated the law (1) to prevent a significant and imminent evil, (2) with no reasonable legal alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief that the criminal act was necessary to prevent the greater harm, (5) with such belief being objectively reasonable, and (6) under circumstances in which [they] did not substantially contribute to the emergency.'" (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1164-1165; see also CALCRIM No. 3403.)

Under California's self-defense laws, one can use proportional force when they reasonably believe they are in imminent danger of physical harm and that force is necessary to stop it. (CALCRIM No. 3470.) Deadly force may only be used if one reasonably believes it is necessary to stop an imminent danger of death or serious injury. (CALCRIM No. 505.)

This bill would extend the human trafficking/intimate partner violence/sexual violence affirmative defenses to crimes on the violent felonies list. As noted above, these defenses would be available to defendants who were coerced to commit a violent felony as a direct result of being a victim of human trafficking, intimate partner violence, or domestic violence, as long as they had a "reasonable fear of harm." The harm they fear need not be serious or violent. The defense would apply even if the crime committed created greater harm than what the human trafficking/intimate partner/domestic violence victim avoided.

As the opposition notes, this can result in concerning outcomes in cases. "[A] sex worker who sets up sex purchasers for an armed robbery along with her sex trafficker cannot be convicted of robbery, or, if the sex purchaser resists and the sex buyer is shot and killed, cannot be convicted of murder even if she was a major participant in the robbery acting with reckless indifference to human life. The same would be true of a physically abused intimate partner who commits a bank robbery series with his or her abuser." Conceivably, under this law, a mother who kills her baby at the behest of her abusive partner to avoid *some* harm to herself would not be criminally liable.

This goes farther than our duress defense. This goes farther than our necessity defense. This even goes farther than our laws on self-defense. Is this fair public safety policy or a step too far?

4) **The United States Supreme Court's Decision in *Cunningham***: The Sixth Amendment right to a jury applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-04.)

In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's Determinate Sentencing Law (DSL) violated a defendant's right to trial by jury by placing sentence-elevating fact finding within the judge's province. (*Id.* at p. 274.) The DSL authorized the court to increase the defendant's sentence by finding facts not reflected in

the jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the offender's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. 293.)

The Supreme Court provided direction as to what steps the Legislature could take to address the constitutional infirmities of the DSL:

> As to the adjustment of California's sentencing system in light of our decision, the ball . . . lies in [California's] court. We note that several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing. They have done so by calling upon the jury - either at trial or in a separate sentencing proceeding - to find any fact necessary to the imposition of an elevated sentence. As earlier noted, California already employs juries in this manner to determine statutory sentencing enhancements. Other States have chosen to permit judges genuinely to exercise broad discretion . . . within a statutory range, which, everyone agrees, encounters no Sixth Amendment shoal. California may follow the paths taken by its sister States or otherwise alter its system, so long as the State observes Sixth Amendment limitations declared in this Court's decisions.

(*Cunningham, supra*, 549 U.S. at pp. 293-294.)

Following *Cunningham*, the Legislature amended the DSL, specifically Penal Code sections 1170 and 1170.1, to make the choice of lower, middle, or upper prison term one within the sound discretion of the court. (See SB 40 (Romero), Chapter 3, Statutes of 2007; SB 150 (Wright), Chapter 171, Statutes of 2009.) This approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. The new procedure removed the mandatory middle term and the requirement of weighing aggravation against mitigation before imposition of the upper term. The sentencing court was permitted to impose any of the three terms in its discretion, and needed only state reasons for the decision so that it would be subject to appellate review for abuse of discretion. (*Id.* at pp. 843, 847.)

SB 40 (Romero), the first of a series of legislation to provide a fix to the constitutional shortcomings of the DSL, contained a sunset provision so that the amendment to the DSL would be repealed on a certain date if further legislative action was not taken before that date. According to intent language contained in SB 40, "It is the intent of the Legislature in enacting this provision to respond to the decision of the United States Supreme Court in *Cunningham v. California*, 2007 U.S. LEXIS 1324 (U.S. 2007). It is the further intent of the Legislature to maintain stability in California's criminal justice system while the criminal justice and sentencing structures in California sentencing are being reviewed." Following SB 40 (Romero), several bills extended the sunset date on the amended DSL to continue allowing judges the discretion to impose the lower, middle or upper term of imprisonment authorized by statute.

Most recently, SB 567 (Bradford), Chapter 731, Statutes of 2021, required that the facts

underlying any aggravating circumstances relied upon by the court to impose a sentence exceeding the middle term either for a criminal offense or for an enhancement be submitted to the trier of facts and found to be true, or be admitted by the defendant. However, this requirement does not apply to proving prior convictions, which can still be proven by a certified record of conviction. SB 567 also required the court, upon the request of the defendant, to bifurcate the trial on the circumstances in aggravation from the trial of charges and enhancements. Except the defendant cannot request a bifurcated trial on enhancements that are an element of the charged offense or where it is otherwise authorized by law. (Pen. Code, § 1170, subd. (b)(1)-(3).)

AB 124 (Kamlager), Chapter 695, Statutes of 2021, required the court to impose the low term where any of the specified factors was a contributing factor in the commission of the offense, unless the court finds that the aggravating circumstances outweigh the mitigating circumstances such that imposition of the low term would be contrary to the interests of justice. The specified factors are trauma, youthfulness, or having been a victim of human trafficking or intimate partner violence. (See Pen. Code, § 1170, subd. (d)(6).) AB 124 also specified that this does not preclude the court from imposing the low term even if there is no evidence of these circumstances. (See Pen. Code, § 1170, subd. (d)(7).)

This bill would clarify that that for purposes of deciding whether the aggravating circumstance outweigh the mitigating circumstances where these factors exist, such that imposition of the low term would be contrary to the interests of justice, a court may only consider those aggravating circumstances that have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

However, unlike SB 567 (Bradford), there would be no exception for a certified prior conviction. This is inconsistent with California's current sentencing scheme, as established by SB 567. (See Pen. Code, § 1170, subd. (b)(1)-(3).) It is also inconsistent with the *Apprendi* decision and its reasoning. In *Apprendi* the Court explained that prior convictions were exempt from the rule because of the "procedural safeguards attached to any 'fact' of prior conviction." (*Apprendi, supra*, 530 U.S. at p. 488.)

Does it make sense to have a different rule for balancing aggravating and mitigating circumstances here? Importantly, under current law, if a person receives vacatur relief for a prior conviction, that conviction cannot be considered as a factor at sentencing. That is because having been vacated, the conviction is deemed not to have occurred and the records are sealed and destroyed. (Pen. Code, §§ 236.14, subd. (t)(2), 236.15, subd. (t)(2).)

This bill would also clarify, consistent with SB 567 (Bradford) and current sentencing procedures, that except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the aggravating circumstance alleged in the indictment or information must be bifurcated from the trial of charges and enhancements.

Additionally, this bill would prohibit the court from imposing consecutive sentences or enhancements where one of the aforementioned factors was a contributing factor, unless contrary to the interests of justice. Does the presence of any one of the factors create a

presumptive lower sentence? Again, to the extent any factor in this analysis is viewed as "sentence-elevating fact finding," it will be within the province of the fact-finder/jury.

5) **Penal Code section 28 and Admissibility of Mental State Evidence**: Generally "every crime has two components: (1) an act or omission, sometimes called the actus reus; and (2) a necessary mental state, sometimes called the mens rea." (*People v. Williams* (2009) 176 Cal.App.4th 1521, 1528.) "In criminal law, there are two descriptions of criminal intent: general intent and specific intent. 'A crime is characterized as a "general intent" crime when the required mental state entails only an intent to do the act that causes the harm; a crime is characterized as a "specific intent" crime when the required mental state entails an intent to cause the resulting harm.' (*People v. Davis* (1995) 10 Cal.4th 463, 518-519, fn. 15, 41 Cal. Rptr. 2d 826, 896 P.2d 119.) 'General criminal intent thus requires no further mental state beyond willing commission of the act proscribed by law.'" (*People v. Nicolas* (2017) 8 Cal.App.5th 1165, 1172-1173, quoting *People v. Sargent* (1999) 19 Cal.4th 1206, 1215.)

   Under current law, evidence of a mental disease, mental defect, or mental disorder is not admissible "to show or negate the capacity to form any mental state" including intent, but it may be admissible to show whether the defendant actually formed a required specific intent, premediated, deliberated, or harbored malice aforethought, when a specific intent crime is charged. (Pen. Code, § 28, subd. (a).)

   While current law restricts mental state evidence to specific intent cases, prior to a 1982 amendment, this evidence was admissible to show that the defendant did not "in fact form the required mental state for either general *or* specific intent crimes." (See *People v. Whisett* (1983) 149 Cal.App.3d 213, 220, quoting *Review of Selected 1982 California Legislation* (1983) 14 Pacific L.J. 577, 577-578; fns. omitted.)

   This bill would essentially restore the law to its pre-1982 form. It expands the admissibility of this evidence to the issue of whether or not the defendant formed the required mental state for the crime. This evidence would be admissible to show "a complete lack of the culpable state of mind." (See *People v. Whitsett, supra*, 149 Cal.App.3d at p. 221.)

6) **Argument in Support**: According to *Californians for Safety and Justice*, a co-sponsor of this bill, "In California, 34% of women will experience domestic violence in their lifetimes. Gender-based violence – including domestic violence, human trafficking, and sexual violence – impacts all communities, but Black, brown, and indigenous women and queer and trans people are disproportionately impacted. Black women are almost three times more likely than white women to die at the hands of a current or ex-partner. More than 80% of American Indian and Alaska Native women had experienced violence in their lifetime, and one in three had experienced violence within the past year. And transgender and gender non-conforming people are six times more likely to be sexually assaulted as children, have a greater risk of sexual violence across their lifetimes, and are vastly overrepresented in prisons.

   "A horrifying reality of our current legal system is that over 90% of human trafficking victims are criminalized while being trafficked. Survivors are often arrested and punished simply for protecting their or their family's lives.

   "Too often, victims and survivors of violence are blocked from the opportunity to heal

because their trauma is used against them, ignored, or not accounted for during legal proceedings. Consequently, judges and juries are left with insufficient information and options to make key decisions about survivors' lives, including in criminal charges and sentencing. The criminalization and penalization of victims by California's legal system leaves survivors without access to healing or crucial resources like housing, employment, education, and financial independence, and subjects them to continued cycles of violence, homelessness, and poverty.

"AB 1497 would guarantee that survivors have a chance for their experiences to be heard during legal proceedings as well as a chance to rebuild their lives. Specifically, this bill would:

"• Prevent the unjust conviction of victims who survived contexts of abuse, coercion, and exploitation through an expanded affirmative defense.
• Allow judges and jurors to consider an individual's relevant mental health diagnosis and treatment in more cases, broadening key decision-makers' understanding of each individual and their unique circumstances.
• Permit judges to consider survivors' experiences when making sentencing decisions, allowing for the opportunity for healing and family reunification.
• Ensure that no survivors of abuse, coercion, and exploitation are excluded from forms of post-conviction relief that allow survivors a fresh start including access to employment, housing, education, and other opportunities."

7) **Argument in Opposition**: According to the *San Diego District Attorneys Association*, "First, AB1497 dramatically expands when and how a jury can consider a criminal defendant's claimed mental defect or disorder to now include whether a person acted 'willfully' or on purpose *for all general intent crimes* including rape, domestic violence, assault with a deadly weapon, and assault with force likely to cause great bodily injury among many other crimes. Current law does not allow a jury to consider someone's mental disorder or defect in determining whether the person acted willfully or on purpose or intended to commit the crime unless the crime requires a specific intent or mental state. Urban regions throughout the state are struggling to address the substantial increase in violent crime committed by those struggling with mental disorders and this bill will make holding such people accountable for general intent crimes nearly impossible. Mentally ill people are deserving of treatment and resources, but we must acknowledge that they are likewise capable of intentionally committing crimes that greatly impact our communities and they do so every day in this state. Recently, members of the unsheltered population in downtown San Diego have spontaneously attacked passersby including jurors doing their civic duty on multiple occasions. It is a pervasive problem that has become quite alarming. Expanding the scope of admissibility of mental disorders or defects to general intent crimes is a misguided venture that will enable many who have committed violent crimes to avoid responsibility for their choices and actions.

"Second, AB1497 expands the affirmative defense and vacatur relief process available to victims of human trafficking and sexual or intimate partner violence for non-violent crimes to all crimes including violent felonies. That means that a sex worker who sets up sex purchasers for an armed robbery along with her sex trafficker cannot be convicted of robbery, or, if the sex purchaser resists and the sex buyer is shot and killed, cannot be convicted of murder even if she was a major participant in the robbery acting with reckless

indifference to human life. The same would be true of a physically abused intimate partner who commits a bank robbery series with his or her abuser. Such a broad expansion to include violent felonies is a step too far.

"Third, AB1497 limits judicial discretion to impose an appropriate aggregate prison sentence based on well-established sentencing rules delineating when the court may impose an aggravated term for an offense, consecutive terms for multiple felonies, and any proven or admitted specific conduct enhancements if there is any assertion that the convicted defendant has at any time experienced psychological, physical, or childhood trauma, or the convicted defendant is an adult under 26 years old, or claims to have been at any time a victim of intimate partner violence or human trafficking. By stating the court "shall not impose consecutive terms" and "shall not impose a term of imprisonment for any enhancement" when any of these are a contributing factor to the crime, that means 25 year olds who commit a robbery series will only be punished for a single act, that if they use a gun to accomplish a rape they can avoid any additional punishment for that conduct, and that if a person who experienced sexual abuse as a child becomes an adult, gains employment at a daycare center, and then victimizes multiple children enrolled there can limit their potential punishment to a single act against one single victim. While we acknowledge and understand that there are multiple factors that contribute to an individual's decision to commit a crime, this bill binds the hands of our trial courts and criminal practitioners from appropriately sentencing convicted defendants for the full extent of their criminal conduct. Moreover, this bill fails to establish a standard of proof or address the manner of proof to substantiate such claims of prior trauma or victimization, so courts will be hard pressed to follow the intended purpose of this legislation and give due consideration to these claims. As a result, we must strenuously oppose Assembly Bill 1497.

"Lastly, but perhaps most importantly, this bill likewise portends the unintended consequence of creating more disillusionment and lack of certainty for crime victims who are forced to navigate the criminal justice process through no fault of their own. While we agree with our lawmakers' efforts to engage in responsible criminal justice reformation, AB1497 misses the mark and will re-traumatize victims as they have a front row seat to watch our criminal courts allow convicted defendants avoid appropriate punishment for their crimes."

8) **Prior Legislation**:

a) AB 2169 (Gipson), Chapter 776, Statutes of 2022, clarified that vacatur relief for offenses committed while the petitioner was a victim of human trafficking, intimate partner violence, or sexual violence demonstrates that the petitioner lacked the requisite intent to commit the offense, and that the conviction is invalid due to legal defect.

b) AB 124 (Kamlager), Chapter 695, Statutes of 2021, required courts to consider whether specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations and expands the affirmative defense of coercion for human trafficking victims and extends it and vacatur relief to victims of intimate partner violence and sexual violence.

c) AB 262 (Patterson), Chapter 193, Statutes of 2021, provided additional legal rights when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking.

Allowed a person, when petitioning to vacate a non-violent conviction because the petitioner was a victim of human trafficking and the conviction was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel and removed time limitations to bring the petitions.

d) SB 567 (Bradford), Chapter 731, Statutes of 2021, required that the facts underlying any aggravating circumstances relied upon by the court to impose a sentence exceeding the middle term either for a criminal offense or for an enhancement be submitted to the trier of facts and found to be true, or be admitted by the defendant.

e) AB 2868 (Patterson), of the 2019-2020 Legislative Session, would have provided additional legal rights in the judicial process when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking. AB 2868 was not heard in this committee.

f) AB 2869 (Patterson), of the 2019-2020 Legislative Session, would have allowed a petitioner, on a petition to vacate a non-violent conviction because the petitioner was victim of human trafficking and the conviction that was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel. AB 2869 was not heard in this committee.

g) SB 823 (Block), Chapter 650, Statutes of 2016, allowed a person arrested or convicted of a nonviolent crime while he or she was a human trafficking victim to apply to the court to vacate the conviction and seal and destroy records of arrest.

h) SB 1016 (Monning), Chapter 887, Statutes of 2016, extended the sunset date from January 1, 2017 to January 1, 2022 for provisions of law which provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice.

i) AB 1761 (Weber), Chapter 636, Statutes of 2016, created a human trafficking affirmative defense applicable to non-violent, non-serious, non-trafficking crimes.

j) SB 1202 (Leno), of the 2015-2016 Legislative Session, would have provided that aggravating factors relied upon by the court to impose an upper term sentence must be tried to the jury and found to be true beyond a reasonable doubt, and that trial of all facts pled in aggravation of sentence must be bifurcated. SB 1202 was held on suspense in the Assembly Appropriations Committee.

k) AB 765 (Ammiano), of the 2013-14 Legislative Session, would have prohibited imposition of the upper term of imprisonment unless aggravating factors were found to be true by the finder of fact. AB 765 was held on the Assembly Appropriations suspense file.

l) SB 463 (Pavley), Chapter 598, Statutes of 2013, extended the sunset provision on Penal Code Section 1170 to January 1, 2017.

m) AB 520 (Ammiano), of the 2011-12 Legislative Session, would have prohibited imposition of the upper term of imprisonment unless aggravating factors were found to

be true by the finder of fact. AB 520 was amended to a different subject matter.

n) SB 576 (Calderon), Chapter 361, Statutes of 2011, extended the sunset provisions on Penal Code section 1170 to January 1, 2014.

o) AB 2263 (Yamada), Chapter 256, Statutes of 2010, extended the sunset provisions on Penal Code section 1170 to January 1, 2012.

p) SB 150 (Wright), Chapter 171, Statutes of 2009, eliminated the presumption of the middle term relating to sentencing enhancements found in Penal Code section 1170.1, subdivision (d).

q) SB 1701 (Romero), Chapter 416, Statutes of 2008, extended to January 1, 2011, the provisions of SB 40 which were originally due to sunset on January 1, 2009.

r) SB 40 (Romero), Chapter 3, Statutes of 2007, amended California's DSL to eliminate the presumption for the middle term and to state that where a court may impose a lower, middle or upper term in sentencing a defendant, the choice of appropriate term shall be left to the discretion of the court.

s) SB 799 (Karnette), Chapter 858, Statutes of 2001, allowed women who were convicted of homicide prior to the enactment of the Evidence Code provision providing for the admissibility of evidence relating to battered women's syndrome to bring a writ of habeas corpus when there is a reasonable probability that the result of the case may have been different had evidence of battered women's syndrome been admissible in the original trial.

REGISTERED SUPPORT / OPPOSITION:

Support

California for Safety and Justice (Sponsor)
Crime Survivors for Safety and Justice (Sponsor)
Rainbow Services, Ltd. (Sponsor)
California Partnership to End Domestic Violence (Co-Sponsor)
Californians for Safety and Justice (CSJ) (Co-Sponsor)
Free to Thrive (Co-Sponsor)
Justice for Survivors Coalition (Co-Sponsor)
National Center for Youth Law (Co-Sponsor)
San Francisco Public Defender's Office (Co-Sponsor)
Sister Warriors Freedom Coalition (Co-Sponsor)
ACLU California Action
Asian Prisoner Support Committee
California Alliance for Youth and Community Justice
California Catholic Conference
California Coalition for Women Prisoners
California Coalition for Women Prisoners
California Public Defenders Association (CPDA)

Californians United for A Responsible Budget
Care First California
Children's Defense Fund - CA
Children's Law Center of California
Coalition to Abolish Slavery & Trafficking (CAST)
Communities United for Restorative Youth Justice (CURYJ)
Community against Sexual Harm
Community Legal Services in East Palo Alto
Ella Baker Center for Human Rights
Fair Chance Project
Family Violence Appellate Project
Felony Murder Elimination Project
Fresno Barrios Unidos
Futures without Violence (UNREG)
Initiate Justice
John Burton Advocates for Youth
Kern County Participatory Defense
LA Defensa
Los Angeles Center for Law and Justice
Los Angeles Lgbt Center
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
National Association of Social Workers, California Chapter
National Center for Youth Law's
National Lgbtq Institute on Intimate Partner Violence
Nola Brantley Speaks
North County Lifeline
Pepperdine Restoration and Justice Clinic
Polaris Project
Rainbow Services
Rights4girls
San Diego City Attorney's Office
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
Shared Hope International
Smart Justice California
Starting Over, INC.
Street Grace
Survived & Punished
Valorcalifornia / Valorus
Women's Foundation California
Young Women's Freedom Center
Youth Leadership Institute

3 Private Individuals

Opposition

California District Attorneys Association
San Diegans against Crime

San Diego Deputy District Attorneys Association

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: April 25, 2023
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1519 (Bains) – As Amended April 19, 2023

SUMMARY: Makes it a misdemeanor to remove, alter, or obfuscate any vehicle identification number (VIN) or other unique marking on a catalytic converter. Specifically, **this bill:**

1) Makes it a misdemeanor to remove, alter, or obfuscate any VIN or other unique marking on a catalytic converter.

2) Makes it a misdemeanor to knowingly possess three or more catalytic converters that have a VIN or other unique marking removed, altered, or obfuscated.

3) Exempts from these offenses any of the following:

   a) A person who is removing, altering, or obfuscating a VIN or other unique marking in order to apply a new VIN or unique marking because the catalytic converter is being lawfully installed on a different vehicle; and,

   b) A person that is disassembling, smelting, or otherwise permanently destroying a catalytic converter lawfully in their possession.

EXISTING STATE LAW:

1) Prohibits individuals from purchasing used catalytic converters, as specified. A violation of this offense is an infraction punishable by a fine of up to $4,000. (Veh. Code, § 10852.5.)

2) Provides that any person who knowingly buys, sells, receives, disposes of, conceals, or possesses any property from which any distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding six months if the value of the property does not exceed $950, or by imprisonment in a county jail not exceeding one year, if the value of the property exceeds $950. Property includes, but is not limited to, any component part of a vehicle. (Pen. Code, § 537e.)

3) States that no person shall either individually, or in association with one or more other persons, willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner. This offense is a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Veh. Code, §§ 10852 & 42004; Pen. Code, § 19.)

4) Provides that no person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, a required motor vehicle pollution control

device or system, including catalytic converters, that alters or modifies the original design or performance of the motor vehicle pollution control device or system. If the court finds that a person has willfully violated this section, the court shall impose the maximum fine that may be imposed in the case, and no part of the fine may be suspended. (Veh. Code, §§ 27156 & 38391.)

5) States that no person shall either individually or in association with one or more other persons, willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner. This offense is a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Veh. Code, § 40000.9.)

6) States that no person shall with intent to commit any malicious mischief, injury, or other crime, climb into or upon a vehicle whether it is in motion or at rest, nor shall any person attempt to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended, nor shall any person set in motion any vehicle while the same is at rest and unattended. This offense is a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Veh. Code, §§ 10853 & 42002; Pen. Code, § 19.)

7) Provides that every person who defaces, damages or destroys real or personal property that is not their own, is guilty of vandalism. If the amount of the damage is less than $400, the offense is a misdemeanor, punishable by imprisonment in a county jail, not exceeding one year, or by a fine of $1,000 or by both. If the amount of the damage is $400 or more, the offense is a felony, punishable imprisonment in a county jail not exceeding one year, or by a fine of not more than $10,000, or both. (Pen. Code, § 594 subd. (b).)

8) Defines "receiving stolen property" as buying or receiving any property that has been stolen knowing the property is stolen, or concealing, selling, or withholding any property from the owner, knowing the property is stolen. Receiving stolen property that does not exceed $950 in value is a misdemeanor, as specified, and receiving stolen property that exceeds $950 in value is a wobbler. (Pen. Code, § 496, subds. (a) & (d).)

9) Defines "grand theft" as theft that is committed when the money, labor, or real or personal property taken is of a value exceeding $950, except as specified, and states that grand theft is a wobbler. (Pen. Code, §§ 487, 488, 489, subd. (c).)

10) Defines "petty theft" as obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950 and states that petty theft is a misdemeanor, punishable by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, §§ 490, 490.2 subd. (a).)

11) Provides that, unless otherwise specified, a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Pen. Code, § 19.)

12) Requires the California Highway Patrol (CHP) to, in coordination with the Department of Justice (DOJ), convene a regional property crimes task force to assist local law enforcement with vehicle burglary and theft of vehicle parts and accessories, among other thefts. (Pen.

Code, § 3899.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Marking vehicle parts with a VIN allows stolen parts to be traced back to the original vehicle, assists law enforcement to help victims, and hinders the ability of thieves to sell stolen parts on the black market. That is why the Federal Motor Vehicle Theft Prevention Standard has required manufacturers to mark the VIN on 18 different vehicle parts since 1984. Unfortunately, catalytic converters are not covered by the federal standard and are not required to be marked. Unless law enforcement catches a thief in the act, it is nearly impossible to establish guilt and prosecute thieves for this crime.

   "AB 1519 encourages drivers to get their catalytic converters marked by imposing a misdemeanor for obfuscating the marking. It also imposes a misdemeanor for possessing three or more catalytic converters which have had their VIN markings obfuscated. Law enforcement need more tools to prosecute thieves once they are away from the crime scene, and drivers need to know that the cost of getting their catalytic converter marked is worth it and will effectively deter theft."

2) **Catalytic Converter Theft**: A catalytic converter is an exhaust emission control device that converts toxic gases and pollutants in exhaust gas from an internal combustion engine into less-toxic pollutants. Catalytic converter theft has been on the rise because they are coated with precious metals that have a high recycle value. The Bureau of Automotive Repair (BAR) has made several recommendations to deter theft of catalytic converters, including parking cars in well-lit areas, installing motion-sensing alarm systems, installing theft prevention devices like steel cages, and etching the converter shell with a VIN or license plate number. (BAR, *Catalytic Converter Theft and the Smog Check Program* <https://www.bar.ca.gov/consumer/smog-check-program/catalytic-converter-theft> [as of April 17, 2023].)

   According to a 2021 report by the Congressional Research Service on catalytic converter theft:

   > Thefts of catalytic converters, a key part of the emission control systems of internal combustion vehicles, are on the rise. The devices, which are installed not only on passenger vehicles but also on buses, motorcycles, and commercial trucks, use valuable metals to reduce pollutants emanating from the engine. Replacing a stolen catalytic converter can cost a passenger vehicle owner up to $3,000. …
   >
   > Catalytic converters, the sale of which may net thieves $25 to $500 depending on the type and model of vehicle they were attached to, have become targets for theft for several reasons. During the pandemic, many cars and fleet vehicles remained parked in the same spot for extended periods since people were not driving as much due to pandemic restrictions. These vehicles might be attractive targets for thieves

> because people were not paying attention to them and because the value of the precious metals they contain has risen sharply. …
>
> Federal laws to deter vehicle and vehicle parts thefts were enacted in 1984 and again in 1992 to address rising theft of motor vehicles that were taken to illicit body shops, often called "chop shops," for disassembly. The parts—mainly bumpers, hoods, fenders and similar large metal parts— were then sold either directly or through a salvage yard. These laws simplified the tracing and recovery of parts from stolen vehicles and established a national information system that enables states to access automobile titling information. In implementing these laws, the National Highway Traffic Safety Administration (NHTSA) issued a Federal Motor Vehicle Theft Standard, which requires manufacturers to apply or stamp a car's unique Vehicle Identification Number (VIN) on the engine, transmission, and a dozen other major vehicle parts so law enforcement agencies can better identify vehicles from which the parts were stolen. However, the standard does not require automakers to stamp identification numbers on catalytic converters. …
>
> Identifying stolen vehicle parts has been facilitated by the National Motor Vehicle Title Information System, established by federal law in 1992 (P.L. 102-519) to keep stolen vehicles from being resold. Administered by the American Association of Motor Vehicle Administrators, it requires regular reporting by scrap recyclers and salvage yards. Harnessing the cooperation of these businesses could lead to a decline in catalytic converter thefts if additional documentation were to be required before converters are purchased. …
>
> California has some of the most stringent standards regarding the sale of catalytic converters to scrap recyclers. […] Thus far, CRS has not located evidence about the effectiveness of California's standards in reducing converter theft.

(Congressional Research Service, *Addressing Catalytic Converter Theft* (July 6, 2021) <https://crsreports.congress.gov/product/pdf/IF/IF11870/2> [as of April 16, 2023].)

This bill would make it a misdemeanor to remove, alter, or obfuscate the VIN on the catalytic converter, and would make it a misdemeanor to knowingly possess three or more catalytic converters that have had a VIN removed, altered, or obfuscated. Such an offense would be punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Pen. Code, § 19.) A person would not be guilty of the offense if the catalytic converter is legally being placed on another vehicle, or is being disabled, smeltered or permanently destroyed and is in the person's lawful possession.

3) **Argument in Support**: According to the *California Police Chiefs Association* (CPCA), "Catalytic converter theft has skyrocketed nationwide. According to the National Insurance Crime Bureau (NICB), the theft of catalytic converters has increased significantly during the pandemic. The precious metals found in catalytic converters make theft of these parts very lucrative, and thieves can cut the catalytic converters off a car in a matter of minutes.

According to NICB's Operations, Intelligence and Analytics study of reported thefts, there were 108 catalytic converter thefts per month on average in 2018, 282 average monthly thefts in 2019, and 1,203 average thefts per month in 2020. This is a problem for every single city in California, and a major priority for each law enforcement agency. Under current law, it is difficult for law enforcement to prove a crime has occurred, even when we find individuals with multiple detached catalytic converters with VIN numbers removed. AB 1519 will assist law enforcement in defending against this crime by making it clear possession of a catalytic converter with VIN number removed or altered is in violation."

4) **Related Legislation**:

a) SB 55 (Umberg) would prohibit a dealer or retailer from selling a new or used motor vehicle equipped with a catalytic converter unless the catalytic converter has been permanently marked with the VIN of the vehicle to which it is attached. SB 55 is pending hearing in the Senate Public Safety Committee.

b) AB 641 (Fong) would exclude from the definition of an "automobile dismantler" a person who possesses six or more catalytic converters that are used in the same manner as the unregistered and inoperable vehicles. AB 641 is pending in the Assembly Appropriations Committee.

5) **Prior Legislation**:

a) AB 2682 (Gray), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 2682 was held on the Senate Appropriations Committee suspense file.

b) AB 1622 (Chen), of the 2021-2022 Legislative Session, would have required the Department of Consumer Affairs to provide a licensed smog check station with a sign informing customers about strategies for deterring catalytic converter theft, including the etching of identifying information on the catalytic converter. AB 1622 failed passage in the Assembly Transportation Committee.

c) AB 1653 (Patterson), Chapter 105, Statutes of 2022, added vehicle burglary and theft of vehicle parts and accessories to the CHP regional property crimes task force for organized retail theft.

d) AB 1659 (Patterson), of the 2021-2022 Legislative Session, would have revised the definition of an automobile dismantler to include a person who keeps or maintains two or more used catalytic converters that are not attached to a motor vehicle on property owned by the person, or under their possession or control, for specified purposes. AB 1659 failed passage in the Assembly Transportation Committee.

e) AB 1740 (Muratsuchi), Chapter 513, Statutes of 2022, requires a core recycler to maintain a written record of the year, make, and model of the vehicle from which the catalytic converter was removed.

f) AB 1984 (Choi), of the 2021-2022 Legislative Session, would have prohibited the purchase, sale, receipt, or possession of a stolen catalytic converter, and specifies that a peace officer need not have actual knowledge that the catalytic converter is stolen to

establish probable cause for arrest, and that in a prosecution of the section, circumstantial evidence may be used to prove the stolen nature of the catalytic converter. AB 1984 failed passage in the Assembly Transportation Committee.

g) AB 2398 (Villapudua), of the 2021-2022 Legislative Session, would have created a new crime of possession of five or more detached catalytic converters. AB 2398 failed passage in this Committee.

h) SB 919 (Jones),of the 2021-2022 Legislative Session, would have prohibited a dealer or retail seller from selling a motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved, etched, or otherwise permanently marked with the vehicle identification number of the vehicle to which it is attached. SB 919 failed passage in the Senate Public Safety Committee.

i) SB 986 (Umberg), of the 2021-2022 Legislative Session, would have prohibited any person from purchasing a used catalytic converter from anybody other than certain specified sellers, including an automobile dismantler, an automotive repair dealer, or an individual possessing documentation, as specified, that they are the lawful owner of the catalytic converter. SB 986 died on the Assembly inactive file.

j) SB 1087 (Gonzalez), Chapter 514, Statutes of 2022, prohibits any person from purchasing a used catalytic converter from anybody other than certain specified sellers, including an automobile dismantler, an automotive repair dealer, or an individual possessing documentation, as specified, that they are the lawful owner of the catalytic converter.

k) SB 366 (Umberg), Chapter 601, Statutes of 2021, reconstituted the Vehicle Dismantling Industry Strike Team (VDIST), which requires a study the number of unlicensed automobile dismantlers investigated and the number of investigations that resulted in an enforcement action for the theft of catalytic converters.

REGISTERED SUPPORT / OPPOSITION:

Support

Auto Club of Southern California (AAA)
California Association of Highway Patrolmen
California District Attorneys Association
California New Car Dealers Association (CNCDA)
California Police Chiefs Association
Peace Officers Research Association of California (PORAC)

Opposition

None submitted.

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: April 25, 2023
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1559 (Jackson) – As Amended April 5, 2023

As Proposed to Be Amended In Committee

SUMMARY: Clarifies that it is a criminal offense to interfere with voting by knowingly providing unauthorized access to certified voting technology. Specifically, **this bill**:

1) Updates existing election record retention, preservation, and destruction requirements to provide clear guidance for electronic voting data, as specified.[1]

2) Clarifies that it is a felony to knowingly provide unauthorized access to, or break the chain of custody to, certified voting technology during the lifecycle of that technology, or any finished or unfinished ballot cards.

3) Defines "chain of custody" as a process used to track the movement and control of certified voting technology, through its lifecycle by documenting each person and organization who handles certified voting technology, the date and time it was collected or transferred, and the purpose of the transfer.

4) Defines a "break in the chain of custody" as a period during which control of the certified voting technology is uncertain and during which actions taken on the certified voting technology are unaccounted for or unconfirmed.

5) Defines "certified voting technology" as any certified voting technologies certified by the Secretary of State, including voting systems, ballot on demand printing systems, electronic poll book systems, or adjudication systems, and the hardware, firmware, software, proprietary intellectual property they contain, any components, and any products they generate, including ballots, ballot images, reports, logs, cast vote records, or electronic data.

6) Defines "lifecycle" of certified voting technology as the entire lifecycle of the certified voting technology from the time of certification and trusted build creation through the end of lifecycle of the certified voting technology.

EXISTING LAW:

1) Provides that it is a felony, punishable by imprisonment for two, three, or four years to, before or during an election, tamper with, interfere with, or attempt to interfere with, the correct operation of, or willfully damage in order to prevent the use of, any voting machine,

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[1]This bill has been double referred to the Assembly Elections Committee. Accordingly, the primary focus of this analysis is the penalty provisions that fall within the jurisdiction of this Committee.

voting device, voting system, vote tabulating device, or ballot tally software program source codes. (Elec. Code, § 18564, subd. (a).)

2) Provides that it is a felony, punishable by imprisonment for two, three, or four years to, before or during an election, interfere or attempt to interfere with the secrecy of voting or ballot tally software program source codes. (Elec. Code, § 18564, subd. (b).)

3) Provides that it is a felony, punishable by imprisonment for two, three, or four years to, before or during an election, knowingly, and without authorization, possess a key to a voting machine that will be used in elections in this State. (Elec. Code, § 18564, subd. (c).)

4) Provides that it is a felony, punishable by imprisonment for two, three, or four years to, before or during an election to willfully substitute or attempt to substitute forged or counterfeit ballot tally software program source codes. (Elec. Code, § 18564, subd. (d).)

5) Provides aiding and abetting in the commission of any of the above offenses is punishable by imprisonment in the county jail for a period of six months or in the state prison for 16 months or two or three years. (Elec. Code, § 18565.)

6) Prohibits knowingly accessing and without permission altering, damaging, deleting, destroying, or otherwise using any data, computer, computer system, or computer network in order to wrongfully control or obtain property or data. This offense is punishable as a felony by imprisonment for 16 months, or two or three years and a fine not exceeding $10,000, or as a misdemeanor, by imprisonment in a county jail not exceeding one year, by a fine not exceeding $5,000, or by both. (Pen. Code, § 502, subds. (c)(1) & (d)(1).)

7) Prohibits knowingly accessing and without permission taking, copying, or making use of any data from a computer, computer system, or computer network, or any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network. This offense is a felony, punishable by imprisonment pursuant for 16 months, or two or three years and a fine not exceeding $10,000, or a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding $5,000, or by both. (Pen. Code, § 502, subds. (c)(2) & (d)(1).)

8) Requires the court to consider prohibitions on access to and use of computers in determining the terms and conditions applicable to a person convicted of any of the above offenses. (Pen. Code, § 502, subd. (k).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In California, home to nearly 20 percent of the nation's electors, election security is of the highest priority. As the nonpartisan, chief election official for the state, the California Secretary of State's Office works around the clock to ensure every vote is safe and secure.

"California has the most stringent voting system testing, certification and use requirements in the country.

- Any new voting system in California must receive certification and undergo months of testing, including 1) functional testing, 2) source code review, 3) red team security penetration testing that involves open-ended vulnerability testing of the voting system, and 4) accessibility and volume testing.

- Voting systems cannot connect to the internet.

- All voting systems are air-gapped and kept separate from all other systems.

- Every ballot must either be paper or have a voter-verifiable paper audit trail.

- Prior to every election a logic and accuracy test must be conducted to verify the functioning of the voting system.

- Following every election, the elections officials must conduct a manual audit of a random 1% of ballots to ensure vote count machines are accurate.

"The Secretary of State's Office of Voting System Technology and Assessment (OVSTA) requires that voting systems once certified for use in California has strict chain of custody.

"The Secretary of State's office has administered over $400 million dollars in state and federal funding for voting infrastructure updates, including strengthening the accessibility, accuracy, security, and safety of our elections.

"Even with all that California has done – *and spends* – we must continue to do more to ensure that our requirements for chain of custody, retention, use, and security are clear and unambiguous.

"Now California must act to ensure that voting systems and associated material is protected from those who would act irresponsibly in their privileged role that grants them access to this highly sensitive material. We must also send a strong message that these privileged individuals will suffer substantial consequences for attempting to undermine voters and one of the most basic principles of our democracy – fair and secure elections."

9) **Need for this Bill**: This bill would clarify that it is a felony to knowingly provide unauthorized access to, or break the chain of custody to, certified voting technology during the lifecycle of that technology, or any finished or unfinished ballot cards.
Elections Code section 18564 makes corruption of voting a felony, punishable by imprisonment for two, three, or four years. (Elec. Code, § 18564.) This statute generally prohibits tampering, interfering with, prohibiting the use of voting systems and ballot or tally software program source codes; interfering with the secrecy of voting; the unauthorized possession of a key to a voting machine; and, substitution or forged or counterfeit ballot tally software program source codes. (*Ibid.*) This bill clarifies that a person who provides unauthorized access to voting technology or unfinished ballot cards interferes with the use of voting systems. This clarification is necessary given updates to election technology certified

for use in California.

This conduct can also be prosecuted as a misdemeanor or felony under the State's hacking statute, Penal Code section 502. Under this law, a person is guilty of an offense if they knowingly access, without permission, any data, computer, computer system, or computer network in order to wrongfully control or obtain property or data. This would include voting systems. If convicted for a felony, the offense is punishable by imprisonment for 16 months, or two or three years and a fine not exceeding $10,000, or as a misdemeanor, by imprisonment in a county jail not exceeding one year, by a fine not exceeding $5,000, or by both. (Pen. Code, § 502, subds. (c)(1) & (d)(1).) In addition to fines and imprisonment, a court can also order forfeiture of any computer system used by the person to commit the offense and prohibit the person from accessing and using computers. (Pen. Code, § 502, subd. (k).) In addition, existing law authorizes the Secretary of State (SOS), and in some cases the Attorney General (AG) and county elections officials, to take civil legal action regarding the security of voting systems and the conduct of elections. The penalty is not to exceed $50,000 for each act and for injunctive relief. (Elec. Code, § 18564.5.)

2) **Argument in Support**: According to the *California Secretary of State* (SOS), "AB 1559 provides that the storage, maintenance, and destruction of election material are clear in law by updating the preservation guidelines of election materials, covering the lifecycle of voting technology. Specifically, this measure defines the parameters of the chain of custody of voting technology not yet covered in existing law."

3) **Related Legislation**: AB 1593 (Berman) would make it a misdemeanor for any person to vote or to attempt to vote both in an election held in this state and in an election held in another state on the same date. AB 1593 is pending in the Assembly Appropriations Committee.

4) **Prior Legislation**:

   a) AB 777 (Harper), of the 2017-2018 Legislative Session, would have increased the maximum fine amount from $1,000 to $10,000 for fraudulently signing a ballot.

   b) SB 1376 (Perata), Chapter 813, Statutes of 2004, authorized the SOS, and in some cases the AG and county elections officials, to take legal actions regarding the security of voting systems and the conduct of elections.

REGISTERED SUPPORT / OPPOSITION:

Support

California Secretary of State (Sponsor)
California Association of Clerks & Election Officials

Opposition

None submitted.

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 AB-1559 (Jackson (A))

Mock-up based on Version Number 98 - Amended Assembly 4/5/23
Submitted by: Liah Burnley, Assembly Public Safety

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 327.5 is added to the Elections Code, to read:

327.5. "Jurisdiction" means any county, city and county, city, or special district that conducts elections pursuant to this code.

SEC. 2. Section 2550 of the Elections Code is amended to read:

2550. (a) For purposes of this section, "electronic poll book" means an electronic list of registered voters that may be transported to the polling location. An electronic poll book shall contain all of the following voter registration data:

(1) Name.

(2) Address.

(3) Precinct.

(4) Party preference.

(5) Whether or not the voter has been issued a vote by mail ballot.

(6) Whether or not the vote by mail ballot has been recorded as received by the elections official.

(b) An electronic poll book shall not be used unless it has been certified by the Secretary of State.

(c) The Secretary of State shall adopt and publish electronic poll book standards and regulations governing the certification and use of electronic poll books.

(d) The Secretary of State shall not certify an electronic poll book unless it fulfills the requirements of this section and the Secretary of State's standards and regulations. The Secretary of State may impose additional conditions of approval as deemed necessary by the Secretary of State.

SEC. 3. Section 13004 of the Elections Code is amended to read:

13004. (a) The Secretary of State shall adopt regulations governing the manufacture, finishing, quality standards, distribution, and inventory control of ballot cards and ballot on demand systems.

(b) A ballot printer shall not manufacture or finish ballot cards, or manufacture unfinished ballot cards, for use in California elections, or accept or solicit orders for ballot cards or unfinished ballot cards, before certification as a ballot printer by the Secretary of State. The Secretary of State may impose conditions of approval as deemed necessary by the Secretary of State.

(c) For commercial ballot manufacturers and finishers, the Secretary of State shall require a biennial inspection of the certified manufacturing, finishing, and storage facilities.

(d) Not later than five working days before the Secretary of State begins the initial inspection, the ballot card manufacturer or finisher shall notify or disclose to the Secretary of State in writing any known flaw or defect in its ballot card manufacturing or finishing process, or its manufactured or finished ballot cards, that could adversely affect the future casting or tallying of votes. Once approved by the Secretary of State, the ballot card manufacturer or finisher shall notify the Secretary of State and the affected local elections officials in writing within 24 hours after it discovers any flaw or defect in its ballot card manufacturing or finishing process, or its manufactured or finished ballot cards, that could adversely affect the future casting or tallying of votes.

(e) For purposes of this section, "ballot printer" means any company or jurisdiction that manufactures, finishes, or sells ballot cards, including test ballots, for use in an election conducted pursuant to this code.

SEC. 4. Section 13004.5 of the Elections Code is amended to read:

13004.5. (a) A jurisdiction shall not purchase, lease, or contract for a ballot on demand system unless the ballot on demand system has been certified by the Secretary of State. The Secretary of State may impose additional conditions of approval as deemed necessary by the Secretary of State.

(b) A vendor, company, or person shall not sell, lease, or contract with a jurisdiction for the use of a ballot on demand system unless the ballot on demand system has been certified by the Secretary of State.

(c) This section does not preclude a jurisdiction from conducting research and development of a ballot on demand system. A ballot on demand system that is used for purposes of this subdivision shall not be used in an election conducted pursuant to this code unless the system has been certified by the Secretary of State.

(d) Once a ballot on demand system is approved by the Secretary of State, the ballot on demand system vendor shall notify the Secretary of State and the affected local elections officials in writing

within 24 hours after it discovers any flaw or defect in its ballot on demand system that could adversely affect the future casting or tallying of votes.

(e) The Secretary of State shall promulgate regulations for purposes of certifying ballot on demand systems.

SEC. 5. Section 15209 of the Elections Code is amended to read:

15209. Any magnetic or electronic storage medium, or copy thereof, used for the ballot tabulation program and any magnetic or electronic storage medium, or copy thereof, containing election results shall be kept in a secure location and shall be retained for six months following any local election and 22 months following any federal election or so long thereafter as any contest involving the vote at the local or federal election remains undetermined.

SEC. 6. Section 17301 of the Elections Code is amended to read:

17301. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) The packages containing the following ballots and identification envelope shall be kept by the elections official, unopened and unaltered, for 22 months from the date of the election:

(1) Voted polling place ballots.

(2) Paper record copies, as defined by Section 19271, if any, of voted polling place ballots.

(3) Voted vote by mail voter ballots.

(4) Vote by mail voter identification envelopes.

(5) Voted provisional voter ballots.

(6) Provisional ballot voter identification envelopes.

(7) Spoiled ballots.

(8) Canceled ballots.

(9) Unused vote by mail ballots surrendered by the voter pursuant to Section 3015.

(10) Ballot receipts.

(11) Paper cast vote records.

(c) If a contest is not commenced within the 22-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots, or forgery of vote by mail voters' signatures is not commenced within the 22-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official shall have the ballots destroyed or recycled. The packages shall otherwise remain unopened until the ballots are destroyed or recycled.

SEC. 7. Section 17302 of the Elections Code is amended to read:

17302. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 17301. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The packages containing the following ballots and identification envelopes shall be kept by the elections official, unopened and unaltered, for six months from the date of the election:

(1) Voted polling place ballots.

(2) Paper record copies, as defined by Section 19271, if any, of voted polling place ballots.

(3) Voted vote by mail voter ballots.

(4) Vote by mail voter identification envelopes.

(5) Voted provisional voter ballots.

(6) Provisional ballot voter identification envelopes.

(7) Spoiled ballots.

(8) Canceled ballots.

(9) Unused vote by mail ballots surrendered by the voter pursuant to Section 3015.

(10) Ballot receipts.

(11) Paper cast vote records.

(c) If a contest is not commenced within the six-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots, or forgery of vote by mail voters' signatures is not commenced within the six-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official shall have the packages destroyed or recycled. The packages shall otherwise remain unopened until the ballots are destroyed or recycled.

SEC. 8. Section 17305 of the Elections Code is amended to read:

17305. (a) The following provisions apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) Upon the completion of the counting of the votes as provided in Article 4 (commencing with Section 15640) of Chapter 9 of Division 15, all ballot cards and paper cast vote records shall be kept by the elections official for 22 months from the date of the election or so long thereafter as any contest involving the vote at the election remains undetermined.

(c) Notwithstanding any other provision of this code, the final disposition of all voted ballot cards and paper cast vote records shall be determined by the elections official.

(d) Sealed ballot containers may be opened if the elections official determines it is necessary in a shredding or recycling process. This section shall not be construed to allow packages or containers to be opened except for purposes specified herein. The packages or containers shall otherwise remain unopened until the ballots and paper cast vote records are destroyed or recycled.

SEC. 9. Section 17306 of the Elections Code is amended to read:

17306. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 17305. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) Upon the completion of the counting of the votes as provided in Article 4 (commencing with Section 15640) of Chapter 9 of Division 15, all ballot cards and paper cast vote records shall be kept by the elections official for six months from the date of the election or so long thereafter as any contest involving the vote at the election remains undetermined.

(c) Notwithstanding any other provision of this code, the final disposition of all voted ballot cards and paper cast vote records shall be determined by the elections official.

(d) Sealed ballot containers may be opened if the elections official determines it is necessary in a shredding or recycling process. This section shall not be construed to allow packages or containers to be opened except for purposes specified herein. The packages or containers shall otherwise remain unopened until the ballots and paper cast vote records are destroyed or recycled.

SEC. 10. Chapter 7 (commencing with Section 17600) is added to Division 17 of the Elections Code, to read:

CHAPTER 7. Preservation of Electronic Data

17600. For purposes of this chapter, the following terms have the following meanings:

(a) "Ballot image" means an electronically captured or generated image of a ballot that is created on a voting device or machine, which contains a list of contests on the ballot, may contain the voter selections for those contests, and complies with the ballot layout requirements. A ballot image can be considered a cast vote record.

(b) "Certified voting technology" means any certified voting technologies certified by the Secretary of State, including voting systems, ballot on demand printing systems, electronic poll book systems, or adjudication systems, and the hardware, firmware, software, proprietary intellectual property they contain, any components, and any products they generate, including ballots, ballot images, reports, logs, cast vote records, or electronic data.

(c) "Chain of custody" means a process used to track the movement and control of certified voting technology, as defined in subdivision (b), through its lifecycle by documenting each person and organization who handles certified voting technology, the date and time it was collected or transferred, and the purpose of the transfer. A break in the chain of custody refers to a period during which control of the certified voting technology is uncertain and during which actions taken on the certified voting technology are unaccounted for or unconfirmed.

(d) "Electronic data" includes voting technology software, operating systems, databases, firmware, drivers, and logs.

(e) "End of lifecycle" means the secure clearing or wiping of the certified voting technology so that no software, firmware, or data remains on the equipment and the equipment becomes a nonfunctioning piece of hardware.

(f) "HASH" means a mathematical algorithm used to create a digital fingerprint of a software program, which is used to validate software as identical to the original.

(g) "Lifecycle" of certified voting technology means the entire lifecycle of the certified voting technology from the time of certification and trusted build creation through the end of lifecycle of the certified voting technology.

17601. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) The following data shall be kept by the elections official, on electronic media, stored and unaltered, for 22 months from the date of the election:

(1) All voting system electronic data.

(2) All ballot on demand system electronic data, if applicable.

(3) All adjudication electronic data.

(4) All remote accessible vote by mail system electronic data, if applicable.

(5) All electronic poll book electronic data, if applicable.

(6) HASH values taken from the voting technology devices, if applicable.

(7) All ballot images.

(c) If a contest is not commenced within the 22-month period, or if a criminal prosecution involving fraudulent use, using the ballot tally system to mark or falsify ballots, or manipulation of the ballot tally system, is not commenced within the 22-month period, either of which may involve the vote count of the precinct from which voted ballots were received, the elections official shall have the backups destroyed.

17602. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 17601. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The following data shall be kept by the elections official, on electronic media, stored and unaltered, for six months from the date of the election:

(1) All voting system electronic data.

(2) All ballot on demand system electronic data, if applicable.

(3) All adjudication electronic data.

(4) All remote accessible vote by mail system electronic data, if applicable.

(5) All electronic poll book electronic data, if applicable.

(6) HASH values taken from the voting technology devices, if applicable.

(7) All ballot images.

(c) If a contest is not commenced within the six-month period, or if a criminal prosecution involving fraudulent use, using the ballot tally system to mark or falsify ballots, or manipulation of the ballot tally system is not commenced within the six-month period, either of which may involve the vote count of the precinct from which voted ballots were received, the elections official shall have the backups destroyed.

17603. (a) Certified voting technology equipment and components that are at the end of lifecycle may be securely disposed of or destroyed with the written approval of the manufacturer and the Secretary of State.

(b) With respect to any part or component of certified voting technology for which the chain of custody has been compromised or the security or information has been breached or attempted to be breached, all of the following shall occur:

(1) The chief elections official of the city, county, or special district and the Secretary of State shall be notified within 24 hours of discovery.

(2) The equipment shall be removed from service immediately and replaced if possible.

(3) The integrity and reliability of the certified voting technology system, components, and accompanying electronic data shall be evaluated to determine whether they can be restored to their original state and reinstated.

SEC. 11. Section 18564 of the Elections Code is amended to read:

18564. (a) Any person is guilty of a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years who, before or during an election:

(1) Tampers with, interferes with, or attempts to interfere with, the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software program source codes.

(2) Interferes or attempts to interfere with the secrecy of voting or ballot tally software program source codes. **For the purposes of this paragraph, interferes or attempts to interfere with, includes but is not limited to, knowingly, and without authorization, providing unauthorized access to, or breaking the chain of custody to, certified voting technology during the lifecycle of that technology, or any finished or unfinished ballot cards.**

(3) Knowingly, and without authorization, makes or has in the person's possession credentials, passwords, or access keys to a voting machine that has been adopted and will be used in elections in this state.

(4) Willfully substitutes or attempts to substitute forged or counterfeit ballot tally software program source codes.

~~(5) Knowingly, and without authorization, makes or has in the person's possession copies of electronic data.~~

~~(b) Knowingly, and without authorization, providing unauthorized access to, or breaking the chain of custody to, certified voting technology during the lifecycle of that technology, or any finished~~

~~or unfinished ballot cards, is a crime punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years, by a fine of up to twenty-five thousand dollars ($25,000), or by both that fine and imprisonment.~~

(c) The definitions in Section 17600 apply for purposes of this section.

SEC. 12. Section 19201 of the Elections Code is amended to read:

19201. (a) (1) The Secretary of State may grant conditional approval to a voting system or part of a voting system under either of the following circumstances:

(A) A voting system or part of a voting system was decertified as a result of a review by the Secretary of State pursuant to Section 19232.

(B) A certified voting system or part of that voting system is modified to comply with voting system standards or changes in statute.

(2) For purposes of granting conditional approval to a voting system or part of a voting system pursuant to paragraph (1), the Secretary of State may impose additional conditions of approval as deemed necessary by the Secretary of State.

(b) The Secretary of State may withdraw conditional approval at any time pursuant to Section 19232.

SEC. 13. Section 19205 of the Elections Code is amended to read:

19205. A voting system shall comply with all of the following:

(a) No part of the voting system shall be connected to the Internet at any time.

(b) No part of the voting system shall electronically receive or transmit election data through an exterior communication network, including the public telephone system, if the communication originates from or terminates at a polling place, satellite location, or counting center.

(c) (1) No part of the voting system shall receive or transmit wireless communications or wireless data transfers.

(2) A network connection to any device not directly used and necessary for voting system functions shall not be established. Communication by or with any component of the voting system by wireless or modem transmission at any time is prohibited. A component of the voting system, or any device with network connectivity to the voting system, shall not be connected to the internet, directly or indirectly, at any time.

(d) (1) The voting system shall be used in a configuration of parallel central election management systems separated by an air-gap.

(2) For purposes of this subdivision, "air-gap" includes all of the following:

(A) A permanent central system known to be running unaltered, certified software and firmware that is used solely to define elections and program voting equipment and memory cards.

(B) A physically-isolated duplicate system, reformatted after every election to guard against the possibility of infection, that is used solely to read memory cards containing vote results, accumulate and tabulate those results, and produce reports.

(C) A separate computer dedicated solely to this purpose that is used to reformat all memory devices before they are connected to the permanent system again.

SEC. 14. Section 19281 of the Elections Code is amended to read:

19281. (a) A remote accessible vote by mail system, in whole or in part, shall not be used unless it has been certified or conditionally approved by the Secretary of State before the election at which it is to be first used. The Secretary of State may impose additional conditions of approval as deemed necessary for the certification of the remote accessible vote by mail system.

(b) All other uses of a remote accessible vote by mail system shall be subject to the provisions of Section 19202.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: April 25, 2023
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1647 (Soria) – As Amended March 16, 2023

As Proposed to be Amended in Committee

SUMMARY: Establishes a grant program to be administered by Judicial Council to support veterans treatment courts (VTCs) and justice-involved veterans in counties without VTCs. Specifically, **this bill**:

1) Requires Judicial Council, on appropriation by the Legislature, to operate a grant program for the establishment and support of VTCs, and for the provision of appropriate equivalent services in counties where, because of a lack of a sufficient veteran population or other court resources, operation of a VTC is inefficient or impracticable.

2) Requires Judicial Council to establish standards and procedures for the operation of VTCs, and condition award of funds on adherence to those standards and procedures.

3) Requires VTCs that receive grant funds to report, on July 1, 2025 and on July 1 each year thereafter, the following information:

   a) The number of veterans that participated in the VTC program;

   b) The offenses with which each program participant had been charged or to which each program participant had plead guilty;

   c) The qualifying condition for each program participant who participated in the program;

   d) The number of program participants who completed the program;

   e) The number of program participants who did not complete the program; and,

   f) The length of time that each program participant spent in the program.

4) Requires Judicial Council, on January 1, 2026, and annually thereafter, to send a report to the Legislature with the following information:

   a) The total funds awarded under the grant program;

   b) The amount of funds awarded to each VTC;

   c) The total funds awarded to appropriate equivalent services in counties without a VTC;

d) The specific services to which funds were allocated in counties without a VTC; and

e) A summary of the information submitted to Judicial Council by VTCs.

5) Provides a sunset date of January 1, 2029.

EXISTING LAW:

1) Establishes pretrial misdemeanor diversion for a current or former member of the U.S. military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service. (Pen. Code, § 1001.80, subd. (b).)

2) Requires the court, if it appears to the court that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from the treatment and services provided under the diversion program, after notice to the defendant, to hold a hearing to determine whether the criminal proceedings should be reinstituted. (Pen. Code, § 1001.80, subd. (c).)

3) Authorizes a court to end pretrial misdemeanor diversion and resume criminal proceedings if the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from diversion. (Pen. Code, § 1001.80, subd. (c).)

4) Requires the court to dismiss the criminal charges at the end of the period of diversion if the defendant has performed satisfactorily during the period of diversion. (Pen Code, § 1001.80, subd. (c).)

5) Requires the county, if a referral is made to the county mental health authority as part of the pretrial diversion program, to provide mental health treatment services only to the extent that resources are available for that purpose, as specified. (Pen. Code, §§ 1001.80, subd. (d) & 1170.9, subd. (c).)

6) Requires the county mental health agency, if mental health treatment services are ordered by the court, to coordinate appropriate referral of the defendant to the county veterans service officer, as required. (Pen. Code, §§ 1001.80, subd. (d) & 1170.9, subd. (c).)

7) Requires an order referring a defendant to a county mental health agency only if that agency has agreed to accept responsibility for the treatment of the defendant, the coordination of appropriate referral to a county veterans service officer, and the filing of required reports. (Pen. Code, § 1001.80, subd. (d).)

8) Requires the court, when determining the requirements of a pretrial diversion program for members of the military and military veterans, to assess whether the defendant should be ordered to participate in a federal or community-based treatment service program with a demonstrated history of specializing in the treatment of mental health problems, including substance abuse, post-traumatic stress disorder, traumatic brain injury, military sexual trauma, and other related mental health problems. (Pen. Code, § 1001.80, subd. (e).)

9) Requires the court, in making an order to commit a defendant to an established treatment program, to give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service, including, but not limited to, programs operated by the United States Department of Defense or the United States Department of Veterans Affairs. (Pen. Code, § 1001.80, subd. (f).)

10) Authorizes the court and the assigned treatment program to collaborate with the Department of Veterans Affairs and the United States Department of Veterans Affairs to maximize benefits and services provided to a veteran. (Pen. Code, § 1001.80, subd. (g).)

11) Provides that the period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. (Pen. Code, § 1001.80, subd. (h).)

12) Requires the responsible agency or agencies to file reports on the defendant's progress in the diversion program with the court and with the prosecutor not less than every six months. (Pen. Code, § 1001.80, subd. (h).)

13) Requires the court, in the case of any person convicted of a criminal offense who could otherwise be sentenced to county jail or state prison and who alleges that the person committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the United States military, to make a determination prior to sentencing as to whether the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's service. (Pen. Code, § 1170.9, subd. (a).)

14) Requires the court, if the court concludes that a defendant convicted of a criminal offense is a member of the military or a military veteran, and if the defendant is otherwise eligible for probation, to consider the circumstances as a factor in favor of granting probation. (Pen. Code, § 1170.9, subd. (b)(1).)

15) If the court places the defendant on probation, the court may order the defendant into a local, state, federal, or private nonprofit treatment program for a period not to exceed that period which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists. (Pen. Code, § 1170.9, subd. (b)(2).)

16) Requires the court, if it concludes that a defendant convicted of a felony offense is, or was, a member of the United States military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the defendant's military service, to consider the circumstance as a factor in mitigation when imposing a sentence. (Pen. Code, § 1170.91, subd. (a).)

17) Provides that the primary goal of the use of funds deposited in the mental health account of the local health and welfare trust fund is to serve, among other groups, military veterans in need of mental health services. (Welf. & Inst., § 5600.3, subd. (a)(5).

18) Provides that veterans who may be eligible for mental health services through the United States Department of Veterans Affairs should be advised of these services by the county and assisted in linking to those services, but the eligible veteran shall not be denied county mental or behavioral health services while waiting for a determination of eligibility for, and availability of, mental or behavioral health services provided by the United States Department of Veterans Affairs. (Welf. & Inst., § 5600.3, subd. (a)(5).

19) Provides that counties should consider contracting with community-based veterans' services agencies, where possible, to provide high-quality, veteran specific mental health services. (Welf. & Inst., § 5600.3, subd. (a)(5)(C).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "A significant proportion of veterans suffer from mental health problems, including depression and PTSD. Among veterans, mental illness and substance abuse have high rates of co-occurrence, and both are contributing factors in criminal involvement. Veterans Treatment Courts provide an alternative to incarceration for veterans who have become entangled in the justice system, but access to VTCs statewide is inconsistent and local practices and eligibility criteria differ. This bill will go some way to supporting the operation and establishment of VTCs, and the development and application of consistent standards and practices for their operation."

2) **Veterans Treatment Courts (VTCs):** VTCs are a model of collaborative court that resolve veterans' criminal cases through treatment and supportive services. According to Judicial Council,

> Veterans Treatment Courts developed as an alternative to incarceration with an understanding of the unique needs of JIVs. These specialized courts endeavor to resolve eligible veterans' criminal cases by providing treatment and support to address the underlying issues that may have led them to commit the crime that brought them into the criminal justice system. VTCs provide substance abuse and mental health treatment, as well as other military-specific services. Most VTCs operate on a postconviction model in which the veterans plead guilty and are placed on probation while participating in the VTC. On successful completion of a VTC program, the court may terminate probation, reduce an eligible offense from a felony to a misdemeanor, or dismiss the charges.
>
> VTCs often work closely with VA health centers to provide services to veterans. Additionally, mentorship programs, where VTC graduates or other veteran mentors serve on the VTC team, are a common characteristic of VTCs. VTCs have expanded rapidly nationwide. In 2018, Veterans Justice Outreach specialists, who support JIVs, reported serving in 551 VTCs nationwide. At the initiation of this study, 32 VTCs were operating in 29 of California's 58 counties.

(Judicial Council of Cal., Collaborative Justice: Survey and Assessment of Veterans Treatment Courts (June 2020) p. 4.)

SB 339 (Roth), Chapter 595, Statutes of 2017, required the Judicial Council to conduct a statewide study of veterans and VTCs and to report its findings to the Legislature. Judicial Council issued the report in June 2020. It recommended identifying eligible veterans and notifying them of their rights; reviewing eligibility requirements to expand the number of veterans who qualify for veterans treatment courts; and "utilize[ing] existing local resources rather than creating regional VTCs, including collaborating with justice systems partners to enact a systemwide approach and identifying and utilizing the full array of local resources." (Collaborative Justice, *supra*, at p. 1.) A 2019 Center for Court Innovation reached similar conclusions. (Center for Court Innovation, California Veterans Treatment Court Strategic Plan (Nov. 2019) <https://www.courts.ca.gov/documents/california-strategic-report-final.pdf> [last visited Apr. 20, 2023].)

3) **Judicial Council Grants:** This bill would require Judicial Council to operate a grant program for VTCs and equivalent services. Judicial Council oversees grant programs for other collaborative courts. For example, Judicial Council administers the Collaborative Justice Courts Substance Abuse Focus Program Grant, which funds adult and juvenile drug courts, adult and juvenile mental health courts, dependency and family law drug courts, DUI courts, elder courts, homeless courts, juvenile delinquency drug courts, peer/youth courts, reentry courts, truancy courts, veterans' courts, community courts, girls courts and other collaborative justice courts that have a substance abuse focus. It also administers the Dependency Drug Court Augmentation Grant. (https://www.courts.ca.gov/3080.htm)

   Judicial Council is an appropriate entity in which to establish this program.

4) **Prior Legislation**:

   a) SB 339 (Roth), Chapter 595, Statutes of 2017, required the Judicial Council, contingent upon funding, to conduct a statewide study of veterans and VTCs, as specified, and to report its findings to the Legislature

   b) AB 1672 (Mathis), of the 2015-2016 Legislative Session, would have required the Judicial Council to report to the Legislature on a study of veterans and VTCs that includes a statewide assessment of VTCs currently in operation and a survey of counties that do not operate VTCs. AB 1672 was held under submission in the Senate Appropriations Committee.

   c) AB 2098 (Levine), Chapter 163, Statutes of 2014, required the court to consider a defendant's status as a veteran suffering from PTSD or other forms of trauma when making specified sentencing determinations.

   d) ACR 36 (Atkins), Resolution Chapter 39, Statutes of 2013 encourages all superior courts to consider establishing VTCs and/or veterans treatment review calendars to assist troubled veterans who have service-related mental health issues.

   e) AB 201 (Butler), of the 2012-2013 Legislative Session, would have authorized superior courts to develop and implement VTCs, and would have established standards and procedures for VTCs and would have specified that county participation in the VTCs program is voluntary. The Governor vetoed AB 201.

f) AB 1925 (Salas), of the 2009-2010 Legislative Session, would have authorized superior courts to develop and implement veterans' courts for eligible veterans of the United States (U.S.) military. AB 1925 was vetoed by the Governor.

g) AB 674 (Salas), Chapter 347, Statutes of 2010, allowed a court to order a defendant who suffers from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service, into a treatment program or veterans' courts for a period not to exceed that which the defendant would have served in state prison or jail.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 AB-1647 (Soria (A))

Mock-up based on Version Number 96 - Amended Assembly 3/16/23
Submitted by: Andrew Ironside, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 68530 is added to the Government Code, to read:

68530. (a) The Judicial Council shall, on appropriation by the Legislature, operate a grant program for the establishment and support of veterans treatment courts, and the provision of appropriate equivalent services in counties where, because of a lack of a sufficient veteran population or other court resources, operation of a veterans treatment court is inefficient or impracticable.

(b) The Judicial Council shall establish standards and procedures for the operation of veterans courts, and condition award of funds under this section on adherence to those standards and procedures.

(c) Veterans treatment courts that receive grant funds shall, on July 1, 2025, and on July 1 each year thereafter, report the following information to Judicial Council:

(1) The number of veterans that participated in the veterans treatment court program.

(2) The offenses with which each program participant had been charged or to which each program participant had plead guilty.

(3) The qualifying condition for each program participant who participated in the program.

(4) The number of program participants who completed the program.

(5) The number of program participants who did not complete the program.

(6) The length of time that each program participant spent in the program.

(d) On January 1, 2026, and annually thereafter, Judicial Council shall send a report to the Legislature with all of the following information:

(1) The total funds awarded under the grant program.

(2) The amount of funds awarded to each veteran treatment court.

(3) The total funds awarded to appropriate equivalent services in counties without a veterans treatment court.

(4) The specific services to which funds were allocated in counties without a veterans treatment court.

(5) A summary of the information submitted to Judicial Council under subdivision (c).

(e) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

Date of Hearing: April 25, 2023
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

ACA 8 (Wilson) – As Introduced February 17, 2023

SUMMARY: Removes language in the state Constitution that allows involuntary servitude as punishment to a crime. Specifically, **this measure**:

1) Amends the California Constitution by prohibiting the use of involuntary servitude as punishment for a crime.

2) States that slavery includes forced labor compelled by the use or threat of physical or legal coercion.

EXISTING FEDERAL LAW: States that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. (U.S. Const., 13th Amendment.)

EXISTING STATE LAW:

1) Prohibits slavery. (Cal. Const., Art. I, § 6.)

2) Prohibits involuntary servitude except to punish crime. (Cal. Const., Art. I, § 6.)

3) Allows the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to enter into contracts with public entities, organizations, and businesses for the purpose of conducting programs which use the labor of incarcerated persons. (Cal. Const., Art. XIV, § 5.)

4) States that CDCR shall require of every able-bodied prisoner imprisoned in any state prison as many hours of faithful labor in each day and every day during his or her term of imprisonment. (Pen. Code, § 2700.)

5) Allows CDCR to employ incarcerated persons for the rendering of services that are needed by the state or any political subdivision thereof, including any county, district, city, school or other public use or for use by the federal government, or any agency or department thereof and allows CDCR to enter into contracts for this purpose. (Pen. Code, § 2701.)

6) Allows CDCR to employ incarcerated persons for the rendering of emergency services for the preservation of life or property within the state, whether that property is owned by public entities or private citizens, when a county level state of emergency has been declared due to a natural disaster and the local governing board has requested assistance. (Pen. Code, § 2701.)

7) States that every able-bodied person committed to the custody of CDCR is obligated to work as assigned by department staff and by personnel of other agencies to whom the inmate's custody and supervision may be delegated. Assignment may be up to a full day of work, or other programs including rehabilitative programs, as defined, or a combination of work or other programs. (Cal. Code Regs., Tit. 15, § 3040, subd. (a).)

8) Specifies that inmates in CDCR are expected to work or participate in rehabilitative programs and activities to prepare for their eventual return to society. Inmates who comply with the regulations and rules of CDCR and perform the duties assigned to them shall be eligible to earn good conduct credit as specified. (Cal. Code Regs., Tit. 15, § 3043, subd. (a).)

9) Provides that pay rates at each CDCR facility for paid inmate assignments should reflect the level of skill and productivity required, and will be set with the assistance of the Institutional Inmate Pay Committee. Monthly rates apply to full time employment in the job classifications and will be paid from the support budget or inmate welfare funds. (Cal. Code Regs., Tit. 15, § 3041.2, subd. (a)(1)(2).)

10) Establishes the Prison Industry Authority (PIA), a work program for incarcerated persons to provide goods and services used by CDCR and thereby reducing the costs of its operations. (Pen. Code, §§ 2800-2880.)

11) Provides that the compensation schedule for incarcerated employees in the PIA program shall be based on quantity and quality of work performed and shall be required, but in no event shall that compensation exceed one-half the minimum wage provided in the Labor Code, except as otherwise provided. (Pen. Code, § 2811.)

12) States that incarcerated persons not engaged in PIA programs, but who are engaged in productive labor outside of such programs may be compensated in like manner. (Pen. Code, § 2700.)

13) Sets the minimum wage at $15 per hour, commencing January 1, 2023. On August 1, 2023 and every year thereafter, the Director of Finance is required to calculate and increase in the minimum wage, as specified. (Lab. Code, § 1118.12.)

14) Makes it a felony to hold any person in involuntary servitude, or assume rights of ownership over any person, or sell any person to another, or receive money or anything of value, in consideration of placing any person in the custody, or under the power or control of another. (Pen. Code, § 181.)

15) Provides that a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than $5,000. (Pen. Code, § 236.1, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California is among only 16 states with an exception clause for involuntary servitude in its state constitutions. Most recently, voters in Alabama, Oregon, Tennessee, and Vermont removed involuntary servitude language from their state constitutions. ACA 8 is an opportunity to catch up to these states and serve as a model for others in the nation.

   "Involuntary servitude is an extension of slavery. There's no room for slavery in our constitution, which should reflect our values in 2023. The legacy of slavery and forced labor runs deep in California's history, from the exploitation of Indigenous people in Spanish missions to Black slaves forced to mine for gold. Today, slavery takes on the modern form of involuntary servitude, including forced labor in prisons. Slavery is wrong in all forms and California should be clear in denouncing that in the Constitution.

   "ACA 8 prioritizes rehabilitation for incarcerated people. Incarcerated people should be able to choose jobs and shifts that allow them to continue their education, use the law library, get counseling, and participate in other rehabilitative programs that facilitate growth and transformation."

2) **Involuntary Servitude:** The Thirteenth Amendment of the U.S. Constitution, ratified in 1865, prohibited slavery and involuntary servitude. However, an exception was allowed if involuntary servitude was imposed as punishment for a crime. The United States Supreme Court discussed the intent of the Thirteenth Amendment as it applied to involuntary servitude in the case of *Pollock v. Williams* (1944) 322 U.S. 4.

   > The undoubted aim of the Thirteenth Amendment as implemented by the Antipeonage Act was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States. Forced labor in some special circumstances may be consistent with the general basic system of free labor. For example, forced labor has been sustained as a means of punishing crime, and there are duties such as work on highways which society may compel. But in general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers. When the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work. (*Id.* at pp. 17-18.)

   The U.S. Supreme Court has stated, ". . ., our precedents clearly define a Thirteenth Amendment prohibition of involuntary servitude enforced by the use or threatened use of physical or legal coercion." (*United States v. Kozminski* (1988) 487 U.S. 931, 944.)

   Article I, section 6, of the California Constitution contains the same prohibitions on slavery and involuntary servitude and the same exception for involuntary servitude as punishment for crime. The California Supreme Court has interpreted the prohibition on slavery and involuntary servitude contained in Article I, section 6 of the California Constitution to be coextensive with the protection afforded by the Thirteenth Amendment. (*Moss v. Superior Court* (1998) 17 Cal.4th 396, 418.)

   This ACA would amend the California Constitution by eliminating the reference to involuntary servitude, as well as the exception to involuntary servitude for punishment of a crime. This ACA would further specify that slavery includes forced labor compelled by the

use or threat of physical or legal coercion. Passage of this constitutional amendment by the Legislature would place the issue before the California voters.

3) **Inmate Work in Prisons:** Federal courts have held that the U.S. Constitution does not prohibit a requirement that incarcerated persons must work nor does it provide an incarcerated person a right to wages for work done in custody. Courts have consistently held that state prisoners are not employees entitled to minimum wage. (*Burleson v. California* (1996) 83 F.3d 311.)

   In the case of *Serra v. Lapin* (9th Cir. 2010) 600 F.3d 1191, current and former federal prisoners alleged that the low wages they were paid for work performed in prison violated their due process rights and various sources of international law. In *Serra*, the federal inmates were paid for their work in prison based on a schedule set by the Inmate Work and Performance Pay Program. The wages were established by regulations promulgated by the Bureau of Prisons under the authority of the Attorney General. (*Id.* at 1195.) The incarcerated individuals earned between $ 19.00 and $ 145.00 per month at rates as low as nineteen cents per hour. They contended that by paying them such low wages, that the Federal Bureau of prisons denied their rights. (*Ibid.*)

   The Ninth Circuit Court of Appeals held that the U.S. Constitution does not provide prisoners any substantive entitlement to compensation for their labor. (*Serra v. Lapin*, *supra*, at p. 1196, citing *Piatt v. MacDougall*, 773 (9th Cir. 1985) F.2d 1032, 1035 [holding that the state does not deprive a prisoner of a constitutionally protected liberty interest by forcing him to work without pay].) The court noted that, "Although the Constitution includes, in the Thirteenth Amendment, a general prohibition against involuntary servitude, it expressly excepts from that general prohibition forced labor "as a punishment for crime whereof the party shall have been duly convicted." (*Ibid.*)

   In addition to relying on the exception to involuntary servitude for punishment for a crime, federal courts have found that inmate work does not constitute "involuntary servitude" when the person has a choice to work. For example, the Fifth District Court of Appeals held that participation in a work release program did not constitute involuntary servitude, because the incarcerated persons were not "compelled" to participate in the work release program. The court acknowledged that the choice of whether to work outside of the jail for twenty dollars a day or remain inside the jail and earn nothing may have indeed been "painful" and quite possibly illegal under state law, but stated that the individuals were not forced to work or continued to work against their will. (*Watson v. Graves* (1990) 909 F.2d 1549, 1552.)

4) **Inmate Work at CDCR:** Persons incarcerated at CDCR are required to work or participate in rehabilitative or educational programs. When an individual arrives at a prison reception center they go through a classification process. The classification process determines the security level of the CDCR facility where the person will be housed. During the classification process, incarcerated person are placed on waiting lists for jobs and for rehabilitative programs. The classification process for jobs begins upon reception and periodically throughout the prison term.

   Standard CDCR jobs do not have minimum requirements, such as a high school diploma/GED certificate. Standard jobs can be part-time, full-time, and can include weekend/night shifts. These jobs include clerks, porters, dining work, yard workers and

plant operations (painter, plumber, carpenter, etc.).

Some incarcerated persons are eligible to participate in jobs through PIA. PIA jobs have specific requirements that an incarcerated individual must possess in order to qualify for a particular job. This can include factors such as high school diploma/GED, being disciplinary free for a set period of time, as well as their release date history. There is an application process for PIA jobs and every job has a certification or multiple certifications attached to it. PIA jobs are higher paying than the standard job and incarcerated individuals receive industry-accredited certifications, credits, and training that can be applied upon release for jobs such as meat cutting, coffee roasting, optical, dental, and health care facilities maintenance.

Participating in work while incarcerated can help promote rehabilitation. Inmates can potentially gain skills that can be utilized to facilitate their reintegration in society. Those skills can range from technical knowledge needed to pursue a specific trade or the life skills helpful in navigating work place environments. However, given the potentially coercive nature of work within a custodial environment there exists the danger for abuse of inmate work. Moreover, the payment for labor done by incarcerated person's is abysimally low.

Existing law specifies that pay rates at each prison for paid inmate assignments should reflect the level of skill and productivity required, and will be set with the assistance of the Institutional Inmate Pay Committee. (Cal. Code Regs., Tit. § 3041.2 (a)(1)(2).)

Generally, incarcerated workers are paid the following wages, as determined by the Secretary of CDCR:

General Pay Scale Table Pay Rate Table[1]							
Title	**Pay Grade**	**Hourly Pay Rates**			**Monthly Pay Rates**		
		Low	**Mid**	**High**	**Low**	**Mid**	**High**
Lead Person Level 1 DOT 9	1	$0.32	$0.35	$0.37	$48	$53	$56
Special Skill Level DOT 7–8	2	$0.19	$0.26	$0.32	$29	$39	$48
Technician Level 3 DOT 5–6	3	$0.15	$0.20	$0.24	$23	$30	$36
Semi-Skill Level 4 DOT 3–4	4	$0.11	$0.15	$0.18	$17	$23	$27
Level 4 DOT 1–2	5	$0.08	$0.11	$0.13	$12	$17	$20

Incarcerated individuals working within the Prison Industry Authority, the Joint Venture Program, and at conservation camps and fire camps are paid more.

It is not clear how the elimination of the exception to involuntary servitude for punishment of

[1] Source: Department of Finance, *Inmate Pay*, available at: https://esd.dof.ca.gov/Documents/bcp/1819/FY1819_ORG5225_BCP1687.pdf.

crime in the California Constitution would affect labor in California prisons as it currently exists. The current wages received by most CDCR inmates are arguably coercive. Moreover, California courts would not be able to rely on the justification of punishment in examining an inmate's claim of that their working conditions violate the California Constitution because it constitutes involuntary servitude.

However, the U.S. Supreme Court's definition of involuntary servitude as "a condition of servitude in which the victim is forced to work for [another person] by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process" (See *United States v. Kozminksi*, supra, 487 U.S. 931, at p. 952.), and which this bill would deem to constitute slavery, does not give any indication as to whether or how much compensation must be offered in order for the labor not to be "forced" or "coerced." Courts would still have to evaluate whether the working conditions for incarcerated persons constitutes forced labor compelled by the use or threat of physical or legal coercion. Courts might consider whether incarcerated persons are receiving other benefits such as additional credits or certifications to offset the lack of meaningful wages, or whether the required labor might satisfy a legitimate public purpose. Alternatively, CDCR could pay incarcerated persons some lesser amount than minimum wage per hour sufficient to either avoid the definition above or to entice enough incarcerated persons to voluntarily work.

5) **Argument in Support**: According to the Anti-Ricidivism Coalition, a co-sponsor of this bill, "Despite the Thirteenth Amendment outlawing slavery and involuntary servitude, the California Constitution states, 'Involuntary servitude is prohibited except to punish crime.' But Black's law dictionary makes clear that involuntary servitude is 'when a person is forced to work against his will. Slavery.' In short, involuntary servitude is a form of slavery.

"The legacy of slavery and forced labor runs deep in California's history, from the 1850 Indian Indenture Act that criminalized everyday behavior and wrote racist language into California law, to Africans and African Americans who were forced to mine for gold and help build prisons. Though California entered the union as a 'free' state, there were more than 1,000 enslaved African Americans as well as thousands of enslaved Indigenous people in California at a time when the total population was just 100,000. Continuing through the early 1940s, African Americans were 'leased out' to plantation owners and manufacturers as cheap labor throughout the country – a system that was then replaced by 'chain gangs,' a dehumanizing practice of chaining together incarcerated people to perform manual labor. While the labor has changed to manufacturing, farming, and firefighting, the system of slavery is largely the same.

"Incarcerated people in California today are still forced to follow orders to work or face cruel treatment for any work absences: physical violence, solitary confinement, denial of phone calls and family visits, and disciplinary action that results in longer prison terms. Punishments are often issued even when absences are due to illness or injuries sustained through the work itself.

"More than 94,000 Californians are currently enslaved in state prison. African Americans account for 28% of the prison population despite making up less than 6% of California's overall population. Although no courts explicitly order forced labor as a part of criminal sentencing, it's standard practice to force incarcerated people to perform labor.

"The vast majority of incarcerated people want to work, further their education, and participate in rehabilitative programs — all of which facilitate personal transformation and successful reintegration. Incarcerated people often face a dilemma: report to CDCR-mandated work assignments or report to court-mandated rehabilitative programs such as Narcotics Anonymous. If they follow orders to work, their record will show they failed to complete programming as required. If they do not show up to their shifts, they receive a rules violation (at minimum). Either choice leads to one result: unjust disciplinary action.

"Involuntary servitude leads to dangerous work conditions with virtually no accommodations, whether in CDCR factory settings or ever-increasing wildfires outside the prison. Consider the case of Samual Nathaniel Brown, whose near-death experience with being forced to clean COVID-19-infected facilities while incarcerated at California State Prison Lancaster inspired this proposed Constitutional Amendment. Across prisons, the State leaned on incarcerated workers to produce hand sanitizer, soaps, and masks during this time. In further exploitation, incarcerated workers were not allowed to use this same protective equipment they produced to keep themselves safe during their essential work.

"The psychological effects of slavery and involuntary servitude are well documented throughout the history of California. People who suffer under these conditions develop long-term mental health conditions, including trauma, loss of self-esteem, and the stigma and shame of dehumanization.

"ACA 8 is part of a national movement to ban slavery in all its forms. In 2022, Alabama, Oregon, Tennessee, and Vermont joined Nebraska (2020), Utah (2020), and Colorado (2018) as states that have passed constitutional amendments prohibiting slavery and involuntary servitude. In 2020, U.S. Senator Jeff Merkley (OR) introduced a resolution to remove involuntary servitude from the U.S. Constitution as a punishment for crime. Today, 16 states prohibit enslavement and involuntary servitude, but maintain exception provisions for criminal punishment; 9 states permit involuntary servitude as a criminal punishment – California being one of them.

"It is a moral imperative that California dissolves the remnants of slavery from our constitution. The End Slavery in California Act would give voters the opportunity to amend Article 1, Section 6 of the California Constitution to prohibit slavery and involuntary servitude without exception."

6) **Prior Legislation**:

a) ACA 3 (Kamlager), of the 2021-2022 Legislative Session, was substantially similar to this ACA. ACA 3 was ordered to the Senate Inactive File.

b) SB 1371 (Bradford), of the 2021-2022 Legislative Session, would have required CDCR to adopt a 5-year implementation plan to increase inmate wages. SB 1371 was vetoed.

c) SCR 69 (Bradford), of the 2019-2020 Legislative Session, would have expressed the Legislature's support for fair and just wages for incarcerated persons working for the PIA, the Division of Juvenile Facilities, and CDCR. SCR 69 was never heard in the

Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (Co-Sponsor)
Anti Recidivism Coalition (Co-Sponsor)
California Native Vote Project
Californians for Safety and Justice
Catalyst California
Coalition for A Just and Equitable California
Communities United for Restorative Youth Justice (CURYJ)
Culver City Democratic Club
Edifye
Grip Training Institute
Initiate Justice
Initiate Justice Action
League of Women Voters of California
Legal Services for Prisoners With Children
Planting Justice
San Francisco Public Defender
Showing Up for Racial Justice (SURJ) Bay Area
Sister Warriors Freedom Coalition
Smart Justice California

Opposition

None submitted.

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